TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 464.

GEORGIA RAILWAY & POWER COMPANY, GEORGIA RAILWAY & ELECTRIC COMPANY, J. D. MALSBY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED JULY 5, 1912.

(29,014)

(29,014)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 464.

GEORGIA RAILWAY & POWER COMPANY, GEORGIA RAILWAY & ELECTRIC COMPANY, J. D. MALSBY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and service	3	2
Petition for writ of error	5	3
Order allowing writ of error	7	4
Assignments of error	8	5
Bond on writ of error	16	10
Praecipe for record	20	12
Opinion, Wright, J	22	13
Opinion, Wright, J	29	18
Judgments	36	22
Proceedings in superior court of Fulton County	38	24
Bill of exceptions	38	24
Order on demurrer, &c	40	25
Order on demurrer to intervention of Malsby *et al*	40	25
Testimony of S. A. Johnson	43	27
Letter, Arkwright to mayor, April 23, 1909	50	31
Offers of evidence, &c	51	32

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 4, 1922.

	Original.	Pr
Requests to charge jury	52	
Verdict	54	
Judgment	54	
Plaintiffs' exceptions	55	
Specifications of error	68	
Judge's certificate to bill of exceptions	70	
Service of bill of exceptions	70	
Clerk's certificate to bill of exceptions	71	
Petition	72	
Exhibit A—Grant of Town of College Park to lay track, &c	83	
B—Ordinance of November 6, 1905	86	
C—General Order No. 14	88	
D—Order of Railroad Commission	90	
E—Notice by power companies to mayor *et al*	91	
Amended petition	92	
Exhibit J—Record before Fulton superior court in case of Georgia Railway and Power Co. *vs.* Railroad Commission of Georgia *et al.*, No. 40900	93	
Petition	93	
Exhibits A to P—Ordinances, records, and acts, &c	116	
Order denying mandamus	184	
Demurrer to petition	184	
Answer	186	
Bill of exceptions	188	
Judge's certificate	189	
Judgment of supreme court	190	
Judgment on remittitur	191	
Answer and cross-bill	192	
Exhibit A—Order of Commission	225	
Exhibit B—Resolution, February 5, 1917	226	
Amended petition	227	
Exhibits F to I, inclusive—Rules of Railroad Commission	229	
Opinion and order of Railroad Commission, file No. 13946, *In re* Application for Increased Fares, &c., August 14, 1918	231	
Demurrer to answer and cross-bill	272	
Amended answer	276	
Demurrer and motion to strike out	285	
Order on demurrer and motion to strike out	289	
Verdict	290	
Decree	290	
Clerk's certificate	291	
Clerk's certificate	292	

a Supreme Court of Georgia.

GEORGIA RAILWAY & POWER CO. et al., Plaintiffs in Error,

vs.

MAYOR, ETC., of COLLEGE PARK, Defendants in Error.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the U. S. District Court, N. D. Georgia.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Georgia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, Plaintiffs in Error, and The Mayor and Council of the City of College Park, Defendants in Error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repug-
2 nant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonld, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, as by their complaint appears. We being will that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error what of right, and according to the laws and customs of th United States, should be done.

Witness the Honorable Wm. H. Taft, Chief Justice of the Unite States, the 30 day of May, in the year of our Lord one thousand nin hundred and twenty two.

O. C. FULLER,
Clerk of the District Court of the United States for the Northern District of Georgia.

Allowed by
M. W. BECK,
Associate Justice of the Supreme Court of Georgia, Presiding, the Chief Justice Being Disqualified.

Filed in office May 30, 1922.
Z. D. HARRISON,
Clk. Supreme Court of Ga.

[Endorsed:] Supreme Court of the United States, October Ter 191-. Georgia Railway & Power Co. et al., Pl'ffs in Error, vs. May & Council of the City of College Park, Def'ts in Error. Writ Error.

3 UNITED STATES OF AMERICA, *ss:*

To the Mayor and Council of the City of College Park, Greeting:

You are hereby cited and admonished to be and appear at the Su preme Court of the United States, at Washington, in the District Columbia, within thirty days from the date of service of this Cita tion, pursuant to a writ of error filed in the Clerk's Office of the Su preme Court of Georgia, wherein Georgia Railway & Power Compan Georgia Railway & Electric Company, J. D. Malsby, J. R Hardin, F MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phi lips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowe H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, are plain tiffs in error, and you are defendants in error, to show cause, if an there be, why the judgment rendered against the said plaintiffs i error, as in said writ of error mentioned, ought not to be correcte and why speedy justice ought not to be done to the parties in that be half.

Witness the hand and seal of the Honorable Chief Justice of th Supreme Court of Georgia, this 30 day of May, 1922.

M. W. BECK, [SEAL]
Presiding Justice Supreme Court of Georgia, Chief Justice Fish Disqualified.

Attest:
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

4 Due and legal service of the foregoing citation and copy thereof is hereby waived; and all other and further service required by law is likewise waived. This May 30, 1922.

GEO. P WHITMAN,
Attys. for the Mayor and Council of the City of College Park.

Filed in Office May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

5 In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., and J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roeasler, Plaintiffs in Error,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

From Fulton Superior Court.

To the Honorable William H. Fish, Chief Justice of the Supreme Court of Georgia:

Now come Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, by their attorneys, and complain and allege:

1.

That on or about the 29th day of April, 1922, the Supreme Court of the State of Georgia made and entered a final order and judgment herein in favor of The Mayor and Council of the City of College Park and against Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley,

B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Benne
6 W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Fiel
R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn,
E. Davis and C. Roessler, in which final order and the proceedin
had thereunder in this case, certain errors were committed to t
prejudice of Georgia Railway & Power Company, Georgia Railwa
Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, J
C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glen
P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J.
Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Will
T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M.
Hawn, David Hawn, P. E. Davis, and C. Roessler, all of which w
more in detail appear from the assignment of errors which is fil
with this petition.

2.

That the Supreme Court of the State of Georgia is the highe
court of the said State of Georgia in which a decision in this s
and this matter could be had.

Wherefore, Georgia Railway & Power Company, Georgia Railw
& Electric Company, J. D. Malsby, J. R. Hardin, F. MacDona
Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J.
Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simps
J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H.
Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfi
M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, petition
pray that writ of error from the Supreme Court of the State
Georgia may issue in its behalf to the Supreme Court of the Uni
States for the correction of errors so complained of, and that a tru
script of the record, proceedings and papers in this case, duly
thenticated, may be sent to the Supreme Court of the United St

COLQUITT & CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON & HOPKINS,
Attorneys for Petitioners, Plaintiffs in Erro

7 The writ of error as prayed for in the foregoing peti
is hereby allowed, this May 30, 1922.

The writ of error to operate as a supersedeas and the bond for t
purpose is fixed at the sum of $250.00.

Dated, Atlanta, Georgia, this 30 day of May, 1922.

M. W. BECK,
Presiding Justice Supreme Court of Georgia,
The Chief Justice Being Disqualified.

Filed in office May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., and J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, Plaintiffs in Error,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

From Fulton Superior Court.

Now comes Georgia Railway and Power Company and Georgia Railway & Electric Company, and J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, and respectfully submit that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Georgia in the above entitled matter, there is manifest error, to-wit:

1. Under the undisputed facts in the case, forced compliance with the ordinance of the Mayor and Council of the City of College Park of November 6, 1905, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of the City of College Park to some central point in the City of Atlanta"

confiscates the property of the Georgia Railway & Electric Company and the Georgia Railway & Power Company.

(*a*) The Court erred in not holding said provision unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States.

(*b*) The Court erred in holding that said provision constituted a contract between the Mayor and Council of the City of College Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, because: (1) Neither of said parties had any right, power or authority to make binding contracts as to fares; (2) said parties are prohibited from making contracts for fixed fares, irrevocable and unlimited as to time, by the Constitution of the State

of Georgia, set out in Sections 6389, 6464, 6467 and 6563, of the Code of 1914 of said State.

(*c*) Said Court erred in not holding that if said provision was ever a contract: (1) It had ended prior to the pending suit: (*a*) By complete performance; (*b*) by adequate notice of its termination; (*c*) by the action of the State of Georgia, through the Commission, by which further forced compliance with said five-cents fare rate provision was rendered discriminatory and, therefore, illegal and confiscatory; (*d*) by the action of the State of Georgia, through orders of the Railroad Commission, requiring the giving of transfers on payment of said five-cents fare (thus entitling College Park passengers to ride over the entire street railway system for five cents, while other passengers, on the same line and for less identical character of service, are required to pay seven cents), and by orders of said body increasing the quality of service over and above that provided for in the claimed contract; (*e*) by the legislative acts of the State of Georgia (Georgia Acts 1906, page 650) extending the territorial extent of the said five-cents fare provision by extending the corporate limits of the City of College Park.

The State Court held that all of said orders and acts of the State were and are legal, valid and binding, and forced compliance
10 therewith. This said construction by the Court of the ordinance of November 6, 1905, together with the forced compliance by said railway companies with said orders and acts of the State aforesaid, render the rate provision of said ordinance invalid and violative of the Fourteenth Amendment of the Constitution of the United States, in that it confiscates the property of plaintiffs in error and denies to them the equal protection of the law guaranteed therein.

2. Under the undisputed facts in the case, forced compliance with said ordinance of November 6, 1905, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta,"

violates the Fourteenth Amendment to the Constitution of the United States as to the individual intervenors in said case, in that it denies to them and all other citizens and patrons, than those leaving or boarding the cars of the street railway companies in the City of College Park, the equal protection of the law as therein guaranteed for that said provision of said ordinance, and the action of the State of Georgia by and through the Railroad Commission of said State, and construction placed upon same by the State court, requires the individual intervenors and all other citizens, persons and patrons (except College Park patrons) to pay seven cents for the same or less service, while College Park patrons, for a similar or greater service, are charged only five cents.

3. Because the legislative act of the State of Georgia (Acts of 1907, page 73 et seq.), as construed and enforced by the State Court,

ıd amended by the Act of August 18, 1919 (Georgia Laws 1919, ıge 94).

(*a*) Renders said act unconstitutional and violative of the
1 Fourteenth Amendment to the Constitution of the United States; in that it denies the plaintiffs in error, individually ıd collectively, the equal protection of the law and fixes a dis-ıiminatory and illegal scheme of rates, in that said act places under ıe jurisdiction of the Railroad Commission of Georgia the right, ɔwer and authority to change rates of fare fixed in all contracts ɪcept valid, subsisting contracts in existence on August 23, 1907, ɛtween any municipality and any street railway company having its ɪincipal office and operating lines of railroad in counties having a ɔpulation of less than 75,000 and more than 125,000. There is ɔ legal or reasonable classification with reference to the contracts ɪcepted and those placed under said Commission's jurisdiction; and ı a result of said discriminatory exception, the individual plain-ffs in error and all other patrons of the street railway companies, ɪcept those boarding or alighting from cars in College Park, are ɐquired to pay seven cents fare, while those boarding or alighting ɔm cars in College Park pay only a five cents fare.

(*b*) Said act of 1907, (Georgia Acts 1907, page 73 et seq.), as ɔnstrued and enforced by the Court, violates the Fourteenth Amend-ıent to the Constitution of the United States, in that the court ɔlds that the said act withholds from the Railroad Commission of ɐorgia the right, power or authority to change the five-cents fare ɾovision of said ordinance of November 6th, 1905 (as set out in ssignment of error No. 1), but holds that said Act confers jurisdic-on upon said Commission to increase the quality and quantity of ɛrvice rendered, and empowers the said Commission to require the ssuing of transfers upon payment of the fare provided for in said ɾdinance; and said act thus construed and enforced, confiscates the ɾoperty of the Georgia Railway & Electric Company and the Georgia
2 Railway & Power Company without due process of law, and denies them the equal protection of the law, in contravention of the Fourteenth Amendment to the Constitution of the ʃnited States.

(*c*) Said Act of 1907 (Acts 1907, page 73 et seq.), as construed ıd enforced by the court against the individual intervenors, plain-ffs in error, fixes an illegal and discriminatory scheme of rates, in ɔlation of the Fourteenth Amendment to the Constitution of the ʃnited States, in that the court holds that under and by virtue of ıid act, power and authority are conferred upon the Railroad Com-ıission of Georgia to fix a seven-cents rate of fare for less or similar ɛrvice rendered to the individual intervenors and other persons ıd patrons similarly situated, while it maintains and keeps in force five-cents rate of fare for a greater or similar service rendered ɔllege Park patrons by the same street railway companies operating ıe same system and over the same lines.

4. The court having held that the provisions of the ordinance of November 6, 1905, of the Mayor and Council of the City of College Park, to-wit:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta,"

is a binding contract between the Mayor and Council of the City of College Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, the Court erred in not holding that the legislative act of the State of Georgia, of 1907 (Acts 1907, page 73 et seq.), as construed by the court, violates Article 1, Section 10 of the Constitution of the United States, in that said Act as thus construed impairs the obligation of the said contract by increasing its burdens; in that the court held that under the Act of 1907

13 the State Railroad Commission had the jurisdiction and power: (*a*) to require, and did require, the issuance of transfers on payment of the five-cents contract fare, thereby entitling passengers to ride, not only to some central point in the City of Atlanta, but over the entire railway system in Atlanta and vicinity and (*b*) to increase the quality and quantity of service rendered for said five-cents fare. The Court erred in not holding that said acts and the orders of the Railroad Commission issued thereunder were unconstitutional and in violation of Article 1, Section 10, of the Constitution of the United States, in that they impair the obligation of the contract upheld by the Court.

5. Under the provisions of the ordinance of the Mayor and Council of the City of College Park of November 6, 1905, to-wit:

"No greater fare than that of five cents for each passenger be charged for passage from the southern limits of said City of College Park to some central point in the City of Atlanta,"

held by the court to be a contract, a five-cents rate of fare is provided for only "from the southern limits of said City of College Park to some central point in the City of Atlanta." The Court held that the legislative acts of the State of Georgia (Acts 1907, page 73 et seq.), and the orders of the Commission under and by virtue of the said act, made said five-cents fare provision operative from other points in the City of College Park to other points in the City of Atlanta, and from Atlanta to College Park. Such construction placed upon said acts and orders impairs the obligations of said contract in violation of Article 1, Section 10 of the Constitution of the United States, in that it places increased burdens upon plaintiffs in error not provided for and set out in said contract, and the Court erred in not holding said acts and orders unconstitutional.

14 6. Because the court, having held that the fare provision of the Ordinance of November 6, 1905, as set out in assignment of error No. 1, constituted a contract, erred in not holding that the act of the General Assembly of the State of Georgia (Acts 190

page 650) violates Article 1, Section 10, of the Constitution of the United States:

(*a*) In that it impairs the obligations of said contract, for that said act, as construed by the court, extended the five-cents provision of said contract to territory added to the City of College Park after the execution of said contract and extended its provisions to territory not included therein at the time the contract was executed.

(*b*) Because the undisputed facts showed that the County of Fulton entered into a contract with the Georgia Railway & Electric Company and the Georgia Railway & Power Company, under and by virtue of which contract the tracks of said street railway companies were placed in the public roads of the County of Fulton, between the City of Atlanta and the City of College Park, and by said contract fares to be charged passengers boarding the cars therein were not limited to five cents. The construction placed by the court upon said legislative act of 1906 required the street railway company to charge only five-cents fares to passengers boarding and alighting from the cars within said territory, and said act, thus construed, impairs the obligations of said contract, adding additional burdens thereto, and the Court erred in not holding said act unconstitutional, in violation of Article 1, Section 10, of the Constitution of the United States; for that under said act and said construction there is imposed a five-cents fare for passengers boarding and alighting from cars in said former County territory.

7. The ordinance of November 6, 1905, as set out in assignment of error No. 1, and as construed by the Court makes said ordinance violative of the Fourteenth Amendment to the Constitution of the United States, for that it denies to plaintiffs in error the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, for that the five-cents fare provision therein contained is, by the undisputed facts, confiscatory; and to compel the Georgia Railway & Electric Company and the Georgia Railway & Power Company to continue to operate under and by virtue of the same, and denying them the right to terminate all its lines under and by virtue of said contract and to cease to operate its street railway lines within the city of College Park, and to compel said street railway companies to permanently devote their property to a public use, without any compensation therefor, and to compel them to continue public service in said territory, without reference to the value of the service rendered, thus confiscates the property of said companies.

COLQUITT AND CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON & HOPKINS,
Attys. for Plaintiffs in Error.

Filed in office: This May 30, 1922.
Z. D. HARRISON,
Clk. Supreme Ct. of Ga.

16 In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, and C. Roessler, Plaintiffs in Error.

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

From Fulton Superior Court.

Know all men by these presents, That we, Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, as Principal, and National Surety Co., of New York, N. Y., as Security, are held and firmly bound unto the Mayor and Council of the City of College Park in the sum of two hundred and fifty Dollars ($250.00), to be paid to said obligee; the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 30 day of May, 1922.

Whereas, the above named Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W.
17 Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, have prosecuted a writ of error in the Supreme Court of the United States to review the judgment rendered in the above entitled action by the Supreme Court of Georgia;

Now therefore, the condition of this obligation is such that if the above named Georgia Railway & Power Company, Georgia Railway & Electric Co., J. D. Malsby, J. R. Hardin, F. MacDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F.

Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, shall prosecute their said writ of error to effect and answer all costs and damages if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

GEORGIA RAILWAY & POWER COMPANY,
By G. W. BRINE, [SEAL.]
Its Vice President.
GEORGIA RAILWAY & ELECTRIC COMPANY,
By THOS. K. GLENN, [SEAL.]
Its President.
J. D. MALSBY, [SEAL.]
J. R. HARDIN, [SEAL.]
F. MacDONALD, JR., [SEAL.]
C. M. BINDER, [SEAL.]
J. C. GORMAN, [SEAL.]
A. L. CURTIS, [SEAL.]
J. E. PHILLIPS, [SEAL.]
J. H. GLENN, [SEAL.]
P. L. PROVANO, [SEAL.]
18 H. L. GLOER, [SEAL.]
F. W. HADLEY, [SEAL.]
B. T. SIMPSON, [SEAL.]
J. L. MURPHY, [SEAL.]
D. N. BALDWIN, [SEAL.]
C. E. BENNETT, [SEAL.]
W. E. FLOWERS, [SEAL.]
H. L. WILLIS, [SEAL.]
T. F. JOHNSON, [SEAL.]
W. E. FIELD, [SEAL.]
R. L. WALKER, [SEAL.]
C. C. BARFIELD, [SEAL.]
H. E. HAWN, [SEAL.]
P. E. DAVIS, [SEAL.]
C. ROESSLER, [SEAL.]
Principal.
By WALTER T. COLQUITT,
Atty. at Law & in Fact.
NATIONAL SURETY COMPANY,
Surety,
By HAROLD BLOODWORTH, [SEAL.]
Resident Vice President.

Attest:
EUNICE ELDER, [SEAL.]
Resident Asst. Secretary.

Signed, sealed and delivered in presence of:
—— ——.
—— ——.

GEORGIA,
Fulton County:

On this the 30 day of May, 1922, personally appeared G. W Brine, an officer of Georgia Railway & Power Company and T. K Glenn, an officer of Georgia Railway & Electric Company, and who executed on behalf of said Companies the foregoing bond, and acknowledged that they executed same with full authority.

G. W. BRINE.
THOS. K. GLENN.

19 [SEAL.] HUGH W. DOBBS,
Notary Public.

Notary Public at Large, Georgia.

My Commission Expires Sept. 9th, 1925.

I hereby approve the foregoing bond and surety, this 30 day of May, 1922.

M. W. BECK,
Presiding Justice Supreme Court of Georgia,
The Chief Justice Being Disqualified.

Filed in office May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

20 In the Supreme Court of the State of Georgia.

No. —.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC Co., and J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. E. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, Plaintiffs in Error,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

From Fulton Superior Court.

The Clerk of the Supreme Court is hereby directed to prepare and certify a transcript of the record in the above entitled cause, for the of the Supreme Court of the United States, by including therein the following:

1. Bill of Exceptions, and Record from the Superior Court of Fulton County to the Supreme Court of Georgia, including the Brief of Evidence.

2. Opinion and Judgment of the Supreme Court of Georgia in this case, both on interlocutory injunction and final decree.

3. Petition and writ of error.

4. Allowance of the Writ.

5. Assignments of Error.

6. Supersedeas Bond.

7. Citation, with Acknowledgment of Service.

8. The Writ of Error.

9. This Præcipe and Acknowledgment of Service.

COLQUITT & CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON & HOPKINS,
Attys. for Plffs. in Error.

21 Due and legal service of the above and foregoing Præcipe, copy and service thereof, and all other and further service required by law, hereby waived.
This May 30, 1922.

GEO. P. WHITMAN,
Attys. for Defendants in Error,
Mayor and Council of the City of College Park.

Filed in Office, May 30, 1922.
Z. D. HARRISON,
Clerk Supreme Court of Georgia.

22 Supreme Court.

Nos. 2359 and 2334.

GEORGIA RAILWAY AND POWER COMPANY et al.

v.

TOWN OF DECATUR.

GEORGIA RAILWAY AND POWER COMPANY et al.

v.

MAYOR AND COUNCIL OF COLLEGE PARK.

By the COURT:

Upon request of counsel for plaintiff in error the decision of this court in the case of Georgia Railway & Power Co. v. Railroad Com-

mission of Georgia, 149 Ga. 1 (98 S. E. 696, 5 A, L. R. 1), has be reviewed; and after consideration of the ruling there made, it appea that the requisite number of the Judges now presiding are not i favor of reversing the decision so reviewed, and therefore the ruli there made stands unchanged. This ruling controls adversely to th plaintiff in error the issues presented here. But the court is furth of the opinion, that, independently of the ruling made in the ca referred to, the Georgia Railway and Power Company was witho authority to fix the rate which the plaintiffs in the court below soug to have enjoined, and that consequently the court did not err i granting the interlocutory injunction.

WRIGHT, *Judge:*

The differences arising between the parties in the case under co sideration are based more upon legal contentions than upon disput facts.

On April 1, 1903, the Georgia Railway and Electric Compan through its legally constituted officials, signed an agreement ratif ing the terms of an ordinance passed by the Town of Decatur o March 3, 1903, which ordinance provided, among other things, tha

the street-railway company was "to never charge more tha
23 five cents for one fare upon its main Decatur line, referr to as the Rapid Transit Line, for one passenger and one tr upon its regular cars from the terminus of said line in the City Atlanta to the terminus of same in the Town of Decatur, or from th terminus of same in the Town of Decatur to the terminus of th same in the City of Atlanta." This written agreement came abo as the result of compromise between the parties, growing out litigation, through which the Town of Decatur sought to enjoin th Georgia Railway and Electric Company from tearing up and remo ing the line of the Atlanta Railroad Company in the Town Decatur. The written agreement embodied the consent of th municipality to the removal and discontinuance of the line of th Atlanta Railroad Company, with the stipulation as to fare ju quoted. Under this written agreement both parties acted witho differences until some time in the year 1918, when the Georgia Ra way and Power Company (the lessee of the Georgia Railway an Electric Company) petitioned the Railroad Commission to grant a increase of fare over their main Decatur line. This application w rejected by the Railroad Commission, which held that it was wit out jurisdiction to grant the increase of fare, under the proviso the act of August 23, 1907, which prohibited them from interferi with existing rates where there was a valid, subsisting contract. O August 23, 1918, the Georgia Railway and Power Company sought mandamus to compel the Railroad Commission to take jurisdictio and to act upon the application for an increased rate over the electr line in question. This application was based upon an attack on th validity of the contract between the Town of Decatur and th Georgia Railway and Electric Company. This court upheld th judgment of the lower court denying the mandamus absolute, whic

was an adjudication that the Railroad Commission was without jurisdiction because of a valid, subsisting contract between
24 the parties, to wit, the contract of April 1, 1903. On October 5, 1920, the Georgia Railway and Power Company and the Georgia Railway and Electric Company notified the Town of Decatur that on or after October 20, 1920, the fare on the main or north Decatur line would be seven cents, and that they denied the legality and validity of the so-called contract provision limiting the fare to five cents (set out in the ordinance of the Town of Decatur, March 3, 1903, and an agreement of April 1, 1903, signed by the Town of Decatur and the Georgia Railway and Electric Company). Just prior to the threatened raise in rates the Town of Decatur brought the case now under review, denying the right of the power company and the electric company thus to abrogate the contract of April 1, 1903, setting forth in their petition in detail the facts above stated. The defendant companies in their answer and cross-bill denied the validity of the contract of April 1, 1903, upon numerous grounds, and prayed that it be declared null and void, and that all parties be enjoined and restrained from interfering with it in fixing the rate of seven cents or any other just and non-discriminatory rate upon the Decatur line. After granting a temporary restraining order, the judge of the superior court, on December 4, 1920, continued the same of force, and granted the injunction as prayed in favor of plaintiffs and against the defendants. It is to this ruling of the court that exception is taken.

We are of the opinion that the presiding judge was right in granting the injunction as prayed. Under our law the rate of fare upon this and every electric railway company within the State must be fixed by the Railroad Commission, unless there is a valid, subsisting contract made prior to the act of August 23, 1907. The right to fix rates on electric-railway companies' lines is contained in the amendatory act of August 23, 1907 (Acts 1907, p. 72), which carries into effect the provision of the constitution, art. 4, sec. 2, par. 1.
25 Under the act of August 23, 1907, it is provided: "The powers and duties heretofore conferred by law upon the Railroad Commission is hereby extended and enlarged, so that its authority and control shall extend to street railroads and street-railroad corporations, companies or persons owning, leasing, or operating street railroads in this State; provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company." The effect of the constitutional provision and the legislative enactments carrying it into effect was clearly to cover the entire scheme of rate fixing. If there existed, on August 23, 1907, a valid, subsisting contract which fixed the rate, it was conclusive, and neither the Railroad Commission nor either party to the contract can change or alter it. If there was a void contract for any of the numerous reasons urged by plaintiffs in error, then it was not a valid, subsisting contract, and the Railroad Commission only could and should fix a change in the rate. In the instant case the power company is assuming to do what the Railroad Commission refused to do, and what this court

has held they were right in not doing, to wit, declare the contract
April 1, 1903, void. Not only this, but the plaintiffs in error a
asking this court to now declare the contract void and enjoin
parties from interfering with the power company in fixing a fa
of seven cents, or any other just, reasonable, and non-discriminato
rate over the line in question. If this is a void contract, the Ra
road Commission alone has the right to change the fare; if it is
valid, subsisting contract, the power company is bound by it. Plain
tiffs in error are met at the very threshold with the question of the
right to declare void this contract of 1903; but, should we grant
them the right to do so, they are met with what appears to be
unanswerable objection, that the power company h
26 no right to alter, change, or fix a rate differing from t
existing rate under which it has been operating their line
railroad since 1903. This power is reserved alone by the constit
tion to the State, and by legislative enactment is placed in the hand
of the Railroad Commission.

Here it is insisted that where the governmental authority fails
exercise its power to control, and where no contract exists, the com
pany has the right to fix its own fares, provided they are just, reaso
able, and non-discriminatory. Granting this to be true, it is pla
that such condition does not exist. The State of Georgia, in t
amendatory act of 1907 referred to, clearly exercised this authori
to regulate; and it is no answer to say that an appeal has alrea
been made to the Railroad Commission, and that it has refused f
want of jurisdiction. The Railroad Commission disclaimed juri
diction, not because they were without power to fix rates for electri
railroad companies, but because in the case they had under revie
they were deprived of that right by the existence of a valid, su
sisting contract. Whatever conclusion might be reached as to t
validity of the contract of April 1, 1903, it would not affect the co
clusion that the power company is without authority to change
fix rates on its electric lines, and this is exactly what it attempts
do, and what the trial court has enjoined it from doing in the i
stant case.

But the ruling of this court in the case of Georgia Railway a
Power Co. v. Railroad Commission, 149 Ga. 1 (98 S. E. 696 5 A.
R. 1), if unreversed, is conclusive on the issue involved in the i
stant case. In that case Justice Beck rendering the decision sai
"Under the provisions contained in the fifth section of t
27 act approved August 23, 1907, embodied in the Civil Co
§2662, the railroad commission of this State is without a
thority to exercise the power conferred and extended by that act.
as to determine or fix fares upon lines of street railroads within t
limits of any town or city between which and the street-railroad co
pany operating such lines there was a valid, subsisting contract
the time of the passing of the act. There was such a contract b
tween the City of College Park and the Georgia Railway and Pow
Company, and between that company and the Town of Decat
as to one line running from Decatur to Atlanta. These contra
were in existence on the 23d day of August, 1907, and are still su

sisting contracts. As we decided in the first part of this opinion, these contracts are not invalid, but are valid and subsisting contracts, and were valid and subsisting contracts on the 23d day of August 1907." This decision clearly settles the question that at the time of the execution of this contract both the Georgia Railway and Electric Company and the Town of Decatur had authority to execute the contract of April 1, 1903.

Mr. Justice White, in the case of Southern Iowa Electric Co. v. City of Chariton, 41 Sup. Ct. 400 (255 U. S. —, 65 L. ed. —), held: "Where, however, the public-service corporations and the governmental agencies dealing with them have power to contract as to rates, and exert that power by fixing by contract rates to govern during a particular time, the enforcement of such rates is controlled by the obligation resulting from the contract, and therefore the question of whether such rates are confiscatory becomes immaterial;" citing Freeport Water Company v. Freeport, 180 U. S. 587, 593 (45 L. ed 679, 686, 21 Sup. Ct. 493); Detroit v. Detroit City R. Co. 184 U. S. 368 (46 L. ed. 592, 22 Sup. Ct. 410); Knoxville Water Co. v. Knoxville, 189 U. S. 434, 437 (47 L. ed. 887, 23 Sup. Ct. 531); Cleveland v. Cleveland City R. Co., 194 U. S. 519 (48 L. ed. 1103, 24 Sup. Ct. 756); Home Tel. & Tel. Co. v. Los Angeles, 211 U. S. 265, 273 (53 L. ed. 176, 182, 29 Sup. Ct. 50); Minneapolis v. Minneapolis Street R. Co. 215 U. S. 417 (54 L. ed. 259, 30 Sup. Ct. 118); Columbus R. &c. Co. v. Columbus, 249 U. S. 399 (63 L. ed. 669, 6 A. L. R. 1648, P. U. R. 1919D, 239, 39 Sup. Ct. 349).

We have been asked to review and reverse the decision in the case of Georgia Railway and Power Company v. Railroad Commission of Georgia, supra; but, upon review the requisite number of the Judges now presiding are not in favor of reversing the decision so reviewed, and therefore the ruling there made stands unchanged. And the court is further of the opinion, that, independently of this ruling as to the case which we are asked to review, the George Railway and Power Company was without authority to fix the rate which the plaintiffs in the court below sought to enjoin; and consequently the court did not err in granting the interlocutory injunction.

What is said as to the case of Georgia Railway and Power Company v. Town of Decatur is also controlling in the case of the Georgia Railway and Power Company v. College Park.

Judgments affirmed. All the Justices concur.

Gilbert and George, JJ., concur in the judgment affirming the grant of the interlocutory injunction, and specially as to the ruling that the contracts between the municipalities and the street-railway company as to fares are valid, because bound by the decision in Georgia Railway and Power Company v. Railroad Commission of Georgia, supra.

29 No-. 3019 and 3081.

GEORGIA RAILWAY and POWER COMPANY et al.

v.

TOWN OF DECATUR.

GEORGIA RAILWAY & POWER COMPANY et al.

v.

MAYOR AND COUNCIL OF COLLEGE PARK.

By the COURT:

1. A judgment of a trial court granting or refusing an injuncti where the same depends upon a question of law, is, upon its affir ance by the Supreme Court, a final adjudication of such question.

2. The rulings of the Supreme Court, upon the interlocutory ord of the trial judge granting an injunction, become the law of t case as to the particular case.

3. An affirmance by the Supreme Court of the order of the low court granting a temporary injunction is a ruling upon all questio of law involved, though the legal contentions may not have be specifically enumerated or mentioned in the opinion of the cou

WRIGHT, *Judge:*

The present case comes up upon the final hearing in the cou below. The exceptions are to the rulings sustaining the general d murrers, the declination of certain requests to charge, and t direction of a verdict in favor of a permanent injunction, and t final decree thereon. The case thus comes before the court t second time for review. The first appeal was from the interlocut order of the trial judge granting a temporary injunction against t plaintiffs in error. A decision therein was rendered September 2 1921. 152 Ga. 143 (108 S. E. 615). Upon the hearing

30 this first appeal the court held that the decision of the court the mandamus case, Georgia Ry. &c. Co., v. Railroad Co mission of Georgia, 149 Ga. 1, was controlling upon the questio then under consideration, and a request for a review of the mandam case was refused by this court; and, immediately following the refu to review the mandamus case, the court held: "And the court further of the opinion, that, independently of this ruling as to t case we are asked to review, the Georgia Railway & Power Compa was without authority to fix the rate which the plaintiffs in t court below sought to enjoin; and consequently the court did not e in granting the interlocutory injunction." The effect of this ruli was, that not only the law in the mandamus case was controllin but that independently, under the questions of law presented in t appeal then under review, the ruling of the trial judge was witho error.

While the plaintiff in error now insists that some ten distinct points f attack upon the validity of the contract are made in the present ppeal that were not made in the mandamus case (149 Ga. 1), it not and can not be insisted that the identical questions of law were ot involved upon the first hearing of the interlocutory injunction 152 Ga. 143, 108 S. E. 615) as are now involved upon this second ppeal.

But it is insisted by plaintiff in error that one question of constitutional objection to the contract, to wit, that it was violative of ction 6389 of the Civil Code, "was not raised or pleaded when the se at bar was before this court, and, though discussed in rgument, was not considered in the opinion, presumably because it as not then properly before the court." The question raised upon is constitutional objection, if not clearly stated in the pleadings, as certainly argued fully and exhaustively before the court. Supplemental briefs and reply briefs were filed upon the effect of the constitutional question involved in section 6389 of the Civil Code, and the ruling in the case of City of San ntonio v. San Antonio Public Service Corporation, 255 U. S. 47, now cited in support of this very constitutional objection, was en cited and was considered by this court in its ruling.

Upon a careful inspection of the entire record, we are unable to nd a question of law or fact that was not involved in the former earing upon the interlocutory order granting the injunction, or in e mandamus case. The same questions of law are reiterated by mendment, reclothed and elaborated; but it is not difficult, upon a reful inspection, to find that we have met them before.

1. This entire litigation, so often before the courts, has revolved ntinuously around the single question as to whether the contract tween the Georgia Railway and Power Company and the Town Decatur was a valid, subsisting contract. This question has twice en definitely ruled in favor of the validity of the contract; and the st ruling (152 Ga. 143, 108 S. E. 615) is clearly res adjudicata, in r opinion, of the present case.

In the case of ingram v. Mercer University, 102 Ga. 226, 228, 9, Chief Justice Simmons delivering the opinion, this court rerirmed the decision in the case of City of Atlanta v. Methodist urch, 83 Ga. 448, holding that "a judgment of a trial court grantg or refusing an injunction, when the same depends entirely upon question of law, is, upon its affirmance by the Supreme Court, a al adjudication of such question." The court in the case of Ingram Mercer University, supra, said: "Under the equity practice which s prevailed in this State since the passage of the act of October, 70 (Civil Code, §§ 5540, 5558), we think that decision is sound d proper. Under that act many cases are brought to each term this court, which involve no questions but those purely of law. The trial judge passes upon the same, and either grants or refuses an injunction. For a speedy determination of the matter, the law provides a 'fast' writ of error to this court, d further provides that this court shall advance the same upon its

dockets, when requested so to do by either party. This has b
the practice since 1870; and as far as we know or can ascertain fr
consulting our reports, the decisions of this court made upon p
questions of law, upon interlocutory injunctions, have been alw
regarded as final and controlling upon the trial judge on the fi
trial before a jury. If it were not so, a great burden has been u
necessarily placed upon this court. A great many of the cases u
these fast writs of error are brought here upon questions purely le
and this court spends hours, days, and even weeks in investigati
those questions; and to say that after all of this labor a decision m
in such a case is merely advisory, and does not bind the trial ju
or this court in the subsequent litigation between the same parti
seems to us to be absurd. During this term of court a case
brought here from the City of Augusta, involving the acts and c
tracts of the city and of a street-railway company in that city, un
the charter of the city and of the railway company, and certa
contracts entered into by the city, the street railway company a
certain steam-railroad companies whose lines ran into the city,
volving only the construction of these charters and of these c
tracts, matters not of fact but of pure law. The decision of th
questions occupied this court for days, in order to arrive at the pro
construction of the law upon the charters and contracts. Acco
ing to the contention of counsel for plaintiffs in error, when t
case is called for final decree in the superior court, the judge the
can treat this decision as a nullity, and if the case be brought ag
to this court, the same grounds may be insisted upon and we will
be bound by the law as declared in that case."

33 The City of Augusta case, above referred to in the qu
opinion, as an illustration of the reason for the ruling sta
is, upon inspection, a case remarkably similar to the one decided
this court (152 Ga. 143, 108 S. E. 615), and now for review u
a second appeal. Note in connection with the decision in the
Ga. 226, the citations of similar authority, as to the rulings u
interlocutory injunctions becoming res adjudicata upon the se
appeal. Guess v. Stone Mountain Granite &c. Co., 67 Ga. 5
Iverson v. Saulsbury, 68 Ga. 790, 73 Ga. 733; Bailey v. Ros
Ga. 735, 71 Ga. 771; Conyers v. Gray, 67 Ga. 329, 70 Ga. 3
Smith v. Hornesby, 58 Ga. 529, 70 Ga. 552; Mayor etc. v. S
mons, 96 Ga. 477, 99 Ga. 400; National Bank of Athens v. Carl
96 Ga. 469. See also Savannah etc. Railway v. Mayor etc. of
vannah, 115 Ga. 137; Collins v. Carr, 116 Ga. 39; Peak v. S
mons, 119 Ga. 63.

2. The rulings of the court upon an interlocutory grant of
junction become the "law of the case" upon the final hearing.
the opinion in Ingram v. Mercer University, supra, this court s
"In the case of Iverson v. Saulsbury, Respess & Co., 68 Ga. 79
appeared that Iverson, as trustee for his wife and her children,
tained an order from the judge at chambers, allowing him to m
gage the trust property for the purpose of supporting and m
taining the cestui que trust. When it was sought to foreclose
mortgage, the cestui que trust filed a bill asking an injun

ainst the foreclosure, upon grounds therein set out. Upon a de-
urrer the bill was sustained, the case was brought to this court,
d a majority of this court held, Jackson, C. J. dissenting, that
While a chancellor sitting at chambers, on full notice to all par-
s, may order a sale of trust property, he has no power to grant
authority to a trustee to mortgage a trust estate, and a mort-
gage so given will not bind the cestui que trust." When
the case came on for final trial in the superior court, the
al judge followed the ruling of this court. The case was again
ought here on that and other matters; and this court held that
was bound by the former decision, that, "although the present
nch disapprove of the majority decision stated, it is binding in
is case." In the opinion it was said: "Whether this decision be
ht or wrong, it is the law of the case; it is res adjudicata." The
ling in the previous case was declared to be the law of the case,
hough in Weems v. Coker, 70 Ga. 746, the court had disapproved
d expressly overruled the principle laid down in 68 Ga. 790.
hile it was not the law of the State at the time the second case
aulsbury), Respess & Co. v. Iverson, 73 Ga. 733) was decided,
t it shows that this court felt bound to enforce the law as decided
en the case was first here on the injunction. They ruled that
hile not the law generally, it was the law of that particular case."
e also 140 Ga. 507, Southern Bell Tel. &c. Co. v. Glawson.

3. As before stated, the sole question at issue upon the former
aring of this case was whether or not the contract between the
orgia Railway and Power Company and the Town of Decatur
s a valid, subsisting contract. Its validity was attacked in a num-
r of ways, and many constitutional objections were raised thereto;
t when this court reaffirmed the ruling in the mandamus case and
ld that, independently of the mandamus order, the trial court
d not err in granting the interlocutory order, it was an adjudica-
n of every attack upon the validity of the contract in question,
en though the numerous objections may not have been specifically
led upon in the opinion of the court. See, in this connection, Mc-
illiams v. Walthal, 77 Ga. 7; Savannah etc. Railway v. Savan-
h, 115 Ga. 137; 1 A. L. R. 725; Hughes v. Morrison, 141
. 476; State of New Mexico v. County Commissioners, 1 A. L. R.
720.

In the light of the rulings above stated, we are convinced
that this case has had its day in court. The validity of this
ntract was attacked in the mandamus case heretofore referred to,
d in the now case at bar. It has had its day in court and the
ling in the 152 Ga. 143 (108 S. E. 615) is not only res adjudicata
every issue involved in the present hearing, but is the "law of
e case" in the case now under review.
What is said in the foregoing opinion as to the case of Georgia
ilway and Power Company v. Town of Decatur is applicable to
d controlling in the other case, Georgia Railway and Power Com-
ny v. Mayor and Council of College Park.

Judgment affirmed. All the Justices concur.

36 Supreme Court of Georgia.

2334.

Atlanta, September 27, 19

The Honorable Supreme Court met pursuant to adjournme
The following judgment was rendered:

GEORGIA RY. & POWER CO. et al.

v.

MAYOR, ETC., OF COLLEGE PARK.

This case came before this court upon a writ of error fro
superior court of Fulton county; and, after argument had, it is
sidered and adjudged that the judgment of the court belo
affirmed. Judges Meldrim, of the Eastern Circuit, and Wrig
the Rome Circuit, were designated by the Governor and pre
on the argument of this case in the place of Atkinson and
JJ., who were disqualified. Chief Justice Fish, Presiding J
Beck, Associate Justices Gilbert and George, and Judges Me
and Wright concur in the judgment rendered.

Bill of costs, $10.00.

Supreme Court of the State of Georgia,

Clerk's Office, Atlanta.

I certify that the above is a true extract from the minutes o
Supreme Court of Georgia, and that —— —— paid the abov
of costs.

Witness my signature and the seal of said court hereto affixe
day and year last above written.

—— ——,

Cle

Supreme Court of Georgia.

3081.

Atlanta April 29, 1922.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

GEORGIA RY. & POWER CO. et al.

v.

MAYOR, ETC., OF COLLEGE PARK.

This case came before this court upon a writ of error from the uperior court of Fulton county; and, after argument had, it is con-idered and adjudged that the judgment of the court below be ffirmed. Judges Meldrim, of the Eastern Circuit, and Wright, of he Rome Circuit, Sheppard, of the Atlantic Circuit, and Bell, of the lbany Circuit, were designated by the Governor and presided in his case in the places of Chief Justice Fish and Associate Justices tkinson, Hill and Hines, who were disqualified. The Justices and udges presiding all concur in the judgment rendered.

Bill of costs, $15.00.

Supreme Court of the State of Georgia,

Clerk's Office, Atlanta.

I certify that the above is a true extract from the minutes of the upreme Court of Georgia, and that —— —— paid the above bill f costs.

Witness my signature and the seal of said court hereto affixed the ay and year last above written.

—— ——,

Clerk.

38 In the Supreme Court of Georgia.

No. 46335.

GEORGIA RAILWAY & POWER COMPANY, GEORGIA RAILWAY & Elec tric Co., and J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L Wills, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield M. E. Hawn, David Hawn, P. E. Davis, and C. Rossler, Plaintiffs in Error,

v.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error.

GEORGIA,
Fulton County:

Be it remembered that on the 18th day of January, 1922, the came on for trial, and was tried, the case of the Mayor and Council of the City of College Park v. Georgia Railway & Power Company and Georgia Railway & Electric Company, being an application for injunction and being No. 46335, Fulton superior court; said trial coming on before His Honor, Judge George L. Bell, judge of the superior court of the Atlantic circuit, and a jury in Fulton superior court.

Be it remembered that during the pendency of said case and on the 4th day of November, 1920, the following parties applied to the judge of the superior court of Fulton county to be permitted to be made parties defendant in said cause, and to file answers and cross bills therein, said parties being to wit, J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Wills, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and

39 C. Roessler; and that on said date the judge permitted the aforementioned intervenors to be made parties defendant as prayed for and by order permitted them to file answer and cross bill in said case, and in obedience to said order and permission, said intervenors did file in said case, after being made parties defendant as prayed, their answer and cross bill; praying, inter alia, in said answer and cross bill, that the so-called contract provisions with reference to College Park traffic be declared to be illegal, unconstitutional and void, and that same be cancelled.

Be it further remembered that within the time allowed by law and during the pendency of said cause, the Georgia Railway & Power Company and the Georgia Railway & Electric Company duly filed their answer and cross bill in said cause.

On the 3d day of November, 1921, and Georgia Railway & Power

Company and said Georgia Railway & Electric Company, by leave of court first obtained, amended their answer and cross bill.

During the pendency of said cause the Mayor and Council of the City of College Park, the defendants in error herein, on the 4th day of November, 1920, filed an amendment to their original cause of action and same was allowed. A second amendment was filed by said Mayor and Council of the City of College Park on the 4th day of November, 1920, same being allowed.

The Mayor and Council of the City of College Park filed demurrers to the answer and cross bill and to the amendment to the answer and cross bill of the Georgia Railway & Power Company and the Georgia Railway & Electric Company. The said demurrers to said answer and cross bill and to said answer and cross bill as amended came on for hearing before His Honor, Judge George L. Bell, on the 18th day of January, 1922, at which time, after hearing and argument, the general grounds of the demurrer were sustained and said
40 answer and cross bill, and the amendments thereto, of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, were stricken; the order of the judge striking same being as follows, to wit:

"The demurrer of the plaintiff to the answer and cross bill of the defendants filed November 4th, 1920, and the within demurrer and motion to strike of the plaintiff to defendant's said answer and cross bill, and to defendant's amendment thereto, which amendment was filed on November 3d, 1921, and to defendant's said answer and cross bill, as amended by said amendment, coming on regularly for a hearing, the same are, after hearing thereon, hereby sustained, and said answer and cross bill, and said amendment, and said answer and cross bill as amended, are stricken and dismissed, except only in so far as same either specifically admit or specifically deny the allegations of plaintiff's petition, or specifically allege that for want of sufficient information the allegations of said petition are neither admitted nor denied.

In open court, this January 18, 1922.

GEO. L. BELL,
Judge Superior Court, Atlanta Circuit."

Be it further remembered that The Mayor and Council of the City of College Park also filed demurrers to the answer and cross bill of the intervenors heretofore set out. Said demurrers came on to be heard before His Honor, Judge George L. Bell, on the 18th day of January, 1922, and the court sustained the general grounds of the demurrer to the intervenors' cross bill and dismissed the same; the order passed thereon being as follows, to wit:

"The within demurrer of plaintiff to the intervention of J. D. Malsby et al., coming on regularly for a hearing, the same is, upon the hearing thereof, hereby sustained, upon the general
41 grounds thereof, and said intervention stricken and dismissed.

In open court, this January 18, 1922.

GEO. L. BELL,
Judge Superior Court, Atlanta Circuit."

To the said judgments of the court sustaining the demurrers and dismissing the answer and cross bill, and the amendment to the answer and cross bill, of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, and dismissing the intervention and cross bill of the intervenors as above set out, the Georgia Railway & Power Company and the Georgia Railway & Electric Company and the individual intervenors hereinabove named, the plaintiffs in error herein, then excepted and now except to the same, and then alleged and now allege that the court committed error in sustaining each and every one of the grounds of the said demurrers and in not overruling each and every one of them upon each and all of the grounds and terms set out in the answer and cross bill and the amendment thereto of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, and the answer and cross bill filed by the individual intervenors hereinabove named, and say that the court committed error in not overruling each and every ground of said demurrers, for that the said answers and cross bills and the amendment thereto, of the Georgia Railway & Power Company and the Georgia Railway & Electric Company, set up facts and grounds which would entitle said companies to defeat the action brought by The Mayor and Council of the City of College Park and set up, by way of cross bill, questions of fact and grounds which, under the law and State constitutional provisions, and under the law and constitutional provisions of the constitution of the United States, as therein set out, would entitle said plaintiffs in error to
42 maintain their said answer and cross bill and the amendments thereto and entitle them to the relief which they sought. And the said intervenors say that the court erred in striking their said intervention and cross bill, for the reason that the facts and grounds therein set out and the constitutional provisions, both State and Federal therein presented, entitle said intervenors to maintain their said intervention and cross bill and to have the relief therein prayed.

Be it further remembered that during said trial before the court and jury on the 18th day of January, 1922, the Mayor and Council of the City of College Park introduced the following testimony, and evidence:

A. Introduced in evidence all writings or documents set forth in Exhibits A, B, C, D and E, attached to the original petition; all the writings and documents, Exhibits F, G, H and I, attached to one of the amendments to the petition; all the writings or documents, Exhibit J, attached to the other amendment; it being agreed that the said exhibits were true copies of the purported originals and could be introduced in evidence in lieu of the originals or certified copies.

B. S. A. JOHNSON swore that the facts set out in the petition were true.

C. The original petition in the case of Georgia Railway & Power Company v. Railroad Commission of Georgia and the individual members of said commission; being No. 40900, Fulton superior

court, and being application for mandamus against said commission; which petition is set out in full in the amendment to the original petition in this case and made a part of the record in this case.

D. Counsel for College Park introduced a bill introduced in the house of representatives of Georgia on July 22, 1919, seeking
43 to add to section 2662 of the code of Georgia, the following:

"Provided, That the above provision, to wit: 'that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company,' shall not apply to any suburban and street railroad company which has its principal office and operates lines of railroad in counties having a population of not less than 75,000 and not more than 125,000."

Said bill was passed by the house of representatives, and reported to the senate. In the senate said bill was amended as follows, to wit: "By adding after the word 'company' in the first section of said act, the words 'and provided that this section shall not operate as a repeal of any existing municipal ordinances.' And also, "By striking all of section one after the words 'population of' and inserting in lieu thereof the words 'of 50,000 or more.'"

The bill thus amended passed the senate, but the senate amendment was disagreed to by the house.

E. S. A. JOHNSON, being sworn, testified as follows: "I was Mayor of the City of College Park during the years 1919 and 1920; I have been a resident of College Park for the last twelve years and am familiar with the street car lines and traffic of the Georgia Railway & Power Company and the Georgia Railway & Electric Company in and about the City of College Park. While I became a resident of College Park about twelve years ago, I was living in close proximity to said city, and have often had occasion to visit the same, and before my residence in said city was quite familiar with the lines and traffic of said street railways in and about College Park; that the defendant street railway companies have never charged passengers who boarded cars of said defendants in College Park or debarked from their cars in the City of College Park more than five cents as fares.
44 That, about the year 1906 the Electric Company granted to the public free transfers from College Park to all transfer points on any of its lines and free transfers to College Park from all transfer points on its lines in and about the city of Atlanta; and that neither they nor the Georgia Railway & Power Company have discontinued the practice of giving such transfers as aforesaid from that date until now.

The tracks of said system of street railways are laid as follows in the city of College Park, a double track runs from the north limit south as far as Virginia Avenue; a single track runs from Virginia Avenue south to John Wesley Avenue, right near the old depot of the Atlanta & West Point Railroad; this depot was known about 1905 as the union depot of College Park. Neither of the defendant street railway companies had or have any track which ran as far south as the south limit of the city of College Park. The southern

terminus of said track was, after 1905, and has been all the while until now, at the said John Wesley Avenue, and has never been at the extreme south limit of said city. Said companies have always until now received as fare five cents to any point between the north and south limits of said city on their line; and until some time during the year 1918 received as fares five cents at all points on said College Park lines between Atlanta and College Park. During the year 1918 the Georgia Railway & Power Company began to exact six cents from passengers who boarded or debarked from said defendant's cars at points between the said north limits of the city of College Park and the Atlanta terminus of said line.

The service to and from College Park is entirely inadequate; this information being given by me with relation to the following facts, which I aver to be true; about the time the said power company came before the mayor and council of the city of College
45 Park to ask that said council grant to said company a temporary suspension of its franchise contract of 1905 and to increase the fare to and from College Park to six cents, for the duration of the war emergency, or very shortly thereafter, and after said council saw fit to decline said application, said power company began to withdraw from the College Park lines and traffic the cars of the larger type which it had been using thereon, and began to transfer these cars to other lines and to substitute on the College Park lines and traffic cars of a smaller type and capacity. The cars on said lines are entirely inadequate to handle the traffic to and from College Park; that during the rush hours of practically every day more people are made to stand in the cars than are permitted to sit; that frequently cars with a capacity of sixty odd passengers will be carrying passengers to the number of one hundred and twenty-five to one hundred and fifty.

The population of College Park has increased very much within the last several years; the territory between Atlanta and College Park, and the territory below College Park served by said lines, have grown very materially in population; and the only added facilities provided by said companies for the handling of said additional traffic has been the addition of a few small trippers which run only to Virginia Avenue. There is a line of street railway which runs from College Park to Fairburn, which adds a great volume of traffic to said lines, and said companies have never added any extra facilities for taking care of same. The said Georgia Railway & Power Company has never until now put in operation any trailers on the College Park lines, as recently required of it by the railroad commission."

"Since the 5th day of October, 1920, the day I was served
46 with notice by the defendant street railway companies that on the 20th day of October, 1920, the fares to and from College Park would be increased to seven cents, I have heard many different persons discuss the fact and effect of said notice, and I have heard many of them say that they were going to refuse to pay the seven cents, and that if they were put off the cars they were going to file suits. I have heard such statements by various and sundry persons in said city since the date of said notice and from such facts I can

say that in my opinion if said defendant street railway companies had undertaken to execute the notice mentioned, or were now to execute same, there would be sundry and various suits for damages for such ejections from the cars.

I was present at the council meeting when Mr. P. S. Arkwright, president of the Georgia Railway & Power Company, came before council and ask that council temporarily set aside or disregard its franchise contract of 1905 and permit the power company to collect the increased fares, to wit, six cent fares on the College Park line, and heard the address which he made to council. I was particularly impressed and remember quite well what this gentleman said with regard to this franchise contract, and it was something like this: You hold on to your contract; you have a good contract, and I wouldn't give it up at all; it may stand between your city and a zone system of fares some day; just set it aside for the period of the war emergency; you will then be able to go back to it at the end of that time. I remember that such was the substance of his remarks on this subject. I, as an humble officer of the city, have undertaken to follow the advice of this esteemed gentleman, and to protect the public from the loss of this contract."

A. C. BROOM, being sworn, testified as follows: "I have been a resident of College Park since before the year 1905, and was
47 living in College Park during the years 1905 and 1906, and reside there now. J. M. Walker was mayor of the city during the years 1905 and 1906, but died several years ago. During the year 1906 the Georgia Railway & Electric Company, the predecessor of the Georgia Railway & Power Company, as to the street railway lines in College Park and in and about the city of Atlanta, constructed its double track in College Park. The double track of the Georgia Railway & Electric Company in the city of College Park was being constructed during the year 1906, and some contention arose between the authorities of the city and said company as to the construction of the said double track, or the right to construct same; I do not remember all the details at this time. J. M. Walker, as mayor of the city, intercepted said work of construction and caused same to be stopped for a while. As a result of this disagreement or contention, or thereafter, at least, the said Georgia Railway & Electric Company gave to College Park patrons of said lines in College Park free transfers upon payment of a five cents fare, which permitted them to ride from all points on said lines in College Park to other transfer points on any and all lines of the said company in and about the city of Atlanta, and vice versa; and that they did so use them. Thereafter, the work of finishing the construction of the said double track line in College Park was continued to completion. Since that time, and until now, free transfers with the above mentioned privileges have never been discontinued until now; and neither the Electric Company nor the Power Company ever made any effort to discontinue the issuance of same, as they, and each of them, have all along, since 1906, done, until a petition to discontinue them was filed with the railroad commission of Georgia, sometime during the

year 1918. Since the filing of said application, and since same
48 was denied by the railroad commission, said free transfers have been issued without let or hindrance.

The single line of the said street railway has never been extended further south than John Wesley Avenue, near the freight depot; its southern terminus in College Park was at that point in 1905 and 1906. The double track of said system stops at Virginia Avenue, in said city, and has never been extended further south than that point where it was ended at the time of its completion, on or about the middle or latter part of the year 1906.

That on and after the granting of the franchise in 1905 by the City of College Park to the Electric Company, said electric company began or continued its practice of charging only a five cents fare of all passengers who boarded the cars of said company at any and all points, or stations, of said lines between the southern terminus in College Park and the terminus of said line in the city of Atlanta, and likewise charged such fare of those who boarded said cars at the southern terminus; and I have never heard of anything from either the Electric Company or the Power Company to the effect that they claimed or construed their franchise contract as only applying the fare features thereof to passengers who boarded the cars at the southern terminus of said line in College Park, or at the extreme southern limits of said city, and only at these points, in College Park; and as only applying the fare features thereof to passengers who boarded the cars at the terminus of the College Park line, in the city of Atlanta, when coming southerly towards College Park. I have never heard anything from either of said companies contrary to the idea that such franchise contract of 1905 applied, as to the fare features thereof, to all points between the southern terminus of said line in College Park and the terminus of the same in the city of Atlanta, in both directions.

49 As a member of council during the year immediately following the year of its execution and acceptance, I was in position to ascertain and know of any contention to the contrary, and no such contention was ever brought to the attention of council while I was present, and I have never heard of any having been brought to the attention of council since. I only learned just recently that either the Electric Company or the Power Company ever contended to the contrary of what is above set forth. I never heard of any claim to the effect that such contract covered fares only from the south terminus of said city, or from the south limit of said city and only to the terminus in Atlanta until right recently.

Passengers have boarded said cars at all points on said lines, in College Park, paid only a five cent fare, and have been carried to other points on said company's system in and about the city of Atlanta, without let or hindrance on the part of said companies, or either of them, or of their employes; and such is a fact today. No greater fare than that of five cents has ever been charged or collected by either of said companies for passage from all stations in College Park to all stations between College Park and the Atlanta terminus of said lines, and vice versa, to my knowledge.

Until the year 1918, both the electric company and the power company charged only a five cents fare from all stations between the south terminus of said line in College Park and the terminus of said line in Atlanta, and vice versa; since that time the said power company has been charging a greater fare of those boarding the College Park cars north of College Park and going to points between that point and Atlanta; and have been charging a greater fare of those disembarking from said cars between Atlanta and College Park, coming south.

50 Such charges and privileges have been all the while accorded to all members of the public, whether residents of said College Park now, or heretofore, or not. Such residents as have come into College Park since the date of said franchise contract have had the advantage of the same, without let or hindrance. No question as to the right of that part of the city, or the north side of the same, which has been added since the date of said contract, has ever been raised by either of said companies, to my knowledge or information.

At the time the said franchise contract was made the road in College Park, in which the tracks were planted, was a chert road, the material thereof being what is known as chert, or fine rock and rock sand or crushed, so to speak. On account of the presence of the two street car tracks it has been necessary for the city to widen the said chert road; that of the road as it stood when the double tracks was laid the said tracks covered about half or more of the same, and made it dangerous for pedestrians, and other vehicles, and it was widened."

F. The following letter from P. S. Arkwright, president, to the Mayor and Council of the City of College Park, to wit:

"Atlanta, Ga., April 23, 1909.

To the Honorable Mayor and Council of the Town of College Park.

DEAR SIRS:

In November, 1905, this company was granted by your Honorable body the right to extend its street car tracks along the chert road within the limits of the town of College Park such distance as it desired within the period of five years from that date.

We are informed that application has been made to you for the right to construct a track for an interurban railway to Fair-

51 burn, Georgia, extending from the present terminus of our line on the chert road to the southern limits of the town of College Park, and that you hesitate about granting this right until you know whether this company desires to exercise its franchise along the road beyond the present terminus of its line.

In order that the right may be granted to the interurban company, this company is willing to waive its right to construct a track on the chert road south of the present terminus of its line at College Park, that is to say, if you desire to grant the franchise to the Fairburn

company and it exercises same by constructing a track on th
chert road south of the present terminus of this company's line, th
company will not construct any track on that portion of the ch
road under the franchise above referred to.

Yours very truly,
(Sig.) P. S. ARKWRIGHT,
President."

G. It was agreed that the defendant, Georgia Railway & Pow
Company, held, occupied and operated the lines of railway as less
under a lease from the Georgia Railway & Electric Company for
term of 999 years, the lease being dated in the year 1912.

H. Introduced an extract from paragraph 3 of the amendment
the answer and cross bill of the Georgia Railway & Power Co
pany and the Georgia Railway & Electric Company, filed the
day of November, 1921, as follows, to wit:

"On November 6, 1905, the city of College Park, a municipal co
poration of the State of Georgia, upon petition of the Georgia Ra
way & Electric Company (a street railway company, and the pred
cessor in title of the Georgia Railway & Power Company
52 granted to the said Electric Company a permission (hereina
after called a franchise) to lay a double track upon one
its then streets. In said ordinance, the following provision was ma
as to fares: 'That no greater fare than that of five cents for ea
passenger be charged for passage from the southern limits of sa
city of College Park to some central point in the city of Atlanta.

I. The application of the Georgia Railway & Power Compan
filed in the summer of 1920, to the railroad commission of Georg
to increase street car fares; said application being in brief, the pe
tion filed by the Georgia Railway & Power Company to the railro
commission of Georgia for permission to increase fares on all lines
railway operated by the Georgia Railway & Power Company, inclu
ing all lines of said company exclusive of the Town of College Pa
and the North Decatur line.

Be it further remembered that during the trial of said case bef
the jury, before the court had charged the jury or directed the ju
to find a verdict, the plaintiffs in error requested the court, in wr
ing, to charge the jury as follows:

"First request to charge: I charge you that in rendering a verdi
you could not and should not include the territory added to th
municipal limits of College Park by the acts of the legislature pas
subsequent to the making of the claimed contract.

"Second request to charge: I charge you that you should exclu
from your verdict and from the operation of the claimed contra
sued upon the territory added to the town of College Park subsequ
to the making of the claimed contract.

"Third request to charge: I charge you that the five cents fare provision of the claimed contract only applies to passage for
53 passengers from the southern limits of the line of College Park to some central point in the city of Atlanta.

"Fourth request to charge: I charge you that you should exclude from your verdict and from the operation of the claimed contract sued upon all passengers riding upon the cars of the street railway company other than those who board the cars at the southern limits of the line in College Park coming to some central point in the city of Atlanta.

"Fifth request to charge: I charge you that you should exclude from your verdict and from the operation of the claimed contract sued upon any passengers boarding the cars on the line in question without the town of College Park going to any part of College Park.

"Sixth request to charge: I charge you that you should exclude from your verdict and from the operation of the claimed contract in question the giving of transfers and that the street railway company cannot be required to give transfers where only the claimed contract fare provision of five cents is charged.

"Seventh request to charge: I charge you that in rendering your verdict you could not and should not hold that the railroad commission had jurisdiction to increase the service on the part of the College Park line claimed to be covered by the contract.

"Eighth request to charge: I charge you that the railroad commission could not add on to the provision of the claimed contract any order requiring the street railway company to issue transfers to passengers paying the 5 cent fare under and by virtue of any right conferred by the claimed contract.

"Ninth request to charge: I charge you that the railroad commission of the State of Georgia cannot by its orders add to the
54 claimed contract so as to make said contract cover transportation for passengers from the city of Atlanta to College Park or to any point in College Park."

The above written requests were made as separate and specific requests. The court failed and refused to give in charge to the jury any one of said written requests, and said requests were refused in the instruction of the court to the jury to find the verdict rendered in said case.

Plaintiffs in error then excepted and now except to the refusal of the court to give each of said written requests to charge, and then alleged and now allege that the court committed error in not giving each of said requests. Said requests contained a correct statement of the law adapted to the issues in said case. Plaintiffs in error then assigned and now assign the refusal to give each of them as error.

At the conclusion of the introduction of the evidence, His Honor, Judge George L. Bell, directed the jury trying said case to find a verdict in favor of the Mayor and Council of the City of College Park;

and under the direction of the court, and following same, the ju on the 18th day of January, 1922, found a verdict as follows, to w

"We, the jury, find in favor of plaintiff, Mayor and Council of t City of College Park, and against the defendants, Georgia Railway Power Company and Georgia Railway & Electric Company, on t issues in this case, and that plaintiff is entitled to the relief prayed f by it.

This January 18, 1922.

T. F. MOORE,
Foreman."

On the 18th day of January, 1922, His Honor, Judge George Bell, entered a final decree upon said verdict and judgment, said d cree being as follows, to wit:

"The jury in the above stated case having found the issue
55 in said case in favor of the plaintiff, and that plaintiff is e titled to the relief prayed for by it, it is therefore considere ordered, adjudged and decreed by the court that the injunction granted as prayed for in the petition of the plaintiff and the amen ment thereto, and said injunction is hereby made permanent; and is further ordered and decreed that the defendants, Georgia Railw & Power Company and Georgia Railway & Electric Company, th officers, agents, employes and servants, be and they are hereby pe manently restrained and enjoined in all respects and particulars prayed for by plaintiff in its petition and amendment thereto; an all the relief prayed for in said petition and amendment thereto, hereby granted.

It is further ordered, and decreed that plaintiff do have and re cover of defendants, for use of officers of court — dollars costs.

In open court, this January 18th, 1922.

GEO. L. BELL,
Judge Superior Court, Atlanta Circuit."

In addition to the exceptions and assignment of errors hereinabo stated, the Georgia Railway & Power Company and the Georgia Ra way & Electric Company and the intervenors herein named, plai tiffs in error herein, individually and collectively, further except to the order of the court sustaining the general demurrers to the a swers and cross bills, and the amendments thereto, filed by the Geo gia Railway & Power Company and the Georgia Railway & Electr Company, and to the sustaining of the general demurrers to the in tervention and cross bill of the intervenors; and further excepted t the verdict rendered by the jury as directed by the court and the d cree thereon, and now except to each of the judgments sustaining th general demurrers of the mayor and council of the city of Co
56 lege Park, the verdict of the jury and the decree enter thereon, exception being made separately and collectively t said judgments on the demurrers, the said verdict and the said d cree; and then assigned, and now assign, the same as error for the fo lowing reasons, to wit:

(*a*) Because, according to the contentions of the plaintiffs in ror, the facts set out in the answer and cross bill as amended, and the intervention and cross bill, there was no legal and binding ntract between the Mayor and Council of the City of College Park nd the Georgia Railway & Power Company and the Georgia Rail- ay & Electric Company, fixing a fare of five cents from all points and from the City of College Park.

(*b*) Because under the facts set out in the answer and cross bill amended, and the intervention and the evidence introduced in id case (according to the contention of the plaintiffs in error), here was no valid, legal contract between the Mayor and Council the City of College Park and the Georgia Railway & Electric ompany and the Georgia Railway & Power Company, fixing a fare five cents for all passengers boarding or alighting from the cars ithin the city of College Park.

(*c*) Because neither the Mayor and Council of the City of College ark nor the Georgia Railway & Electric Company or the Georgia ailway & Power Company had or has any right, power or authority make any binding contract as to fares. Under the constitution of his State, as set out in code sections 6389, 6464 and 6467, of the ode of 1910, said parties cannot make any rate agreement for fixed ares, irrevocable and unlimited as to time.

(2) If the power to make rate agreements did exist (which is de- ied), and in pursuance of such power a rate agreement was entered into between the Mayor and Council of the City of College 67 Park and the Georgia Railway & Electric Company and the Georgia Railway & Power Company, valid when made, such greement, should it become confiscatory (as plaintiffs in error con- end it is in this instance), will become and now is illegal, dis- riminatory and void, and, as to the individual intervenors herein, n violation of the fourteenth amendment to the constitution of the nited States, for the reason that said intervenors are denied the qual protection of the law; in that, for the same and less service ey are charged seven cents, while those entering and leaving the ars in College Park, for a similar and greater service, are charged nly five cents.

(*d*) Because (1) the Mayor and Council of the City of College ark had no statutory nor constitutional power or authority to enter nto rate contracts; (2) said Mayor and Council of the City of Col- ge Park had no authority to make contracts as to fares and trans- ortation to or from any point on a line of railway without the ter- itorial limits of said city.

(*e*) Because the court in holding (as plaintiffs in error contend as necessarily done in this case) that the act of the State of Georgia Acts of 1907, pages 73 et seq.) excepted from the jurisdiction of the ailroad commission of Georgia valid municipal rate contracts made ot for a municipality, but for individuals, of date prior to the pas- ge of said act, and excluded from the jurisdiction of the commis-

sion the lines of railway in territory added to the corporate limits of a city wherein were of force contract rates, but conferred jurisdiction upon the commission to change individual rate contracts previously or subsequently made, and like power to change subsequently made municipal rate contracts, renders said contract unconstitutional as violating the fourteenth amendment to the constitution of the United States, in that it denies the plaintiffs in error, individually
58 and collectively, the equal protection of the laws, and is unjust, illegal and discriminatory in that it places under the commission's jurisdiction some contracts, while omitting others of the same class and relating to the same services, and places under the commission's jurisdiction some contracts and withholding others having no legal or different classification.

(*f*) When the court construed (as plaintiffs in error contend was necessarily done in this case) the act of the general assembly (Acts of 1906, page 650) as extending the alleged contract for five cents fares to the territory added to the corporate limits of the City of College Park by said act, then said act, so construed, violates article 1, section 10 of the constitution of the United States, in that: (1) Said act impaired the obligations of a contract between the county of Fulton and said street railway companies, under which the tracks of said companies were placed in the public roads, included in the extended territory before said territory was added to the limits of College Park, and in which contract there was no five cents fare provision, and the forced introduction into said contract of a five cents fare provision violates and impairs the obligations of said contract.

(2) Said act further impairs the obligations of a contract, in contravention of article 1, section 10, of the constitution of the United States, in that it impairs the obligations of the so-called contract sued on, adding thereto additional burdens by extending to additional territory, not contemplated by the contract and not included in the corporate limits of the City of College Park at the time the so-called contract was entered into by the parties.

(*g*) Because, construing the judgments on the demurrers, the verdict and decree of the court (which, according to the contentions of the plaintiffs in error, was necessarily done) so as to hold that
59 the so-called contract sued on fixed a five cents fare for all transportation to and from College Park and Atlanta; and at the same time construing the act of 1907, pages 73 et seq., as empowering the railroad commission to fix and increase the quantity and quality of the service being performed under the five cents contract; then the said act, so construed, violates the fourteenth amendment to the constitution of the United States, in that thereby the plaintiffs in error, both the street railway companies and the individual intervenors, are denied the equal protection of the laws and their property taken and confiscated without due process of law for, as alleged and set out in the original and amended answers and cross bills, and in the intervention, the service now required by the commission makes the five cents fare not only non-compensatory

but confiscatory as well, and the individual intervenors, under the order of the commission increasing the quality and quantity of the service to be performed under the five cents fare contract, are paying for less service of the same quality seven cents, while the College Park patrons are paying only five cents for a greater service.

This forcible increase in the value and cost of the service, and at the same time the legal enforcement of the five cents fare, when such five cents fare (as plaintiffs in error contend) is far below the cost of the service, is in violation of the fourteenth amendment to the United States constitution and is the taking of the private property of the plaintiffs in error without due process of law.

(*h*) Because, construing the judgments on the demurrers, the verdict as directed and the decree thereon (which according to the contention of the plaintiffs in error, was necessarily done) as holding that the act of 1907 (pages 73 et seq.) conferred upon the railroad commission of Georgia the right, power and authority to increase the quality and quantity of service to be performed in the transportation of passengers to and from the City of College Park, as keeping in effect the five-cents fare provision and upholding the orders of the commission increasing the quality and quantity of the service, then said act of 1907, so construed, and the commission's order thereunder, are unconstitutional and violate Article 1, Section 10, of the constitution of the United States, in that the obligations of the contract sued on are impaired thereby, in that the five-cents fare is maintained while the quantity and quality of the service is increased over that provided in the contract.

(*i*) To compel the plaintiffs in error to operate their lines in the City of College Park (as, according to the contentions of the plaintiffs in error, was necessarily done in this case), and to continue the confiscatory rate of five cents, then the said five-cents fare provision violates the fourteenth amendment to the constitution of the United States, as set out in the original and amended answer and cross bill and the intervention.

(*j*) To deny to the plaintiffs in error, Georgia Railway & Power Company and Georgia Railway & Electric Company, the right to terminate their franchise contract with the mayor and council of the City of College Park, and to abrogate and surrender their entire right to maintain and operate their lines within the limits of College Park, and to deny to said railways the right to cease to operate said lines when the claimed contract for five-cents fares is confiscatory, and has been so held by the railroad commission of Georgia (as contended by the said railway companies in this case); (1) renders the entire franchise contract sued on, as thus construed, violative of the fourteenth amendment to the constitution of the United States, for it denies to the plaintiffs in error the equal protection of the laws and due process of law; and compels the said railway companies to perpetually devote their property to the public use without just and adequate compensation. (2) To compel the intervening plaintiffs in error to make up any part of said confiscatory

rates denies them the equal protection of the law and compels th to devote a part of their property to public use in contraventio the provisions of the fourteenth amendment to the constitutio the United States, in that their property is taken to make up a ficiency in the revenue of the said railway companies, for wh they are in no way responsible and without reference to the va of the services rendered then by the said railway companies.

(*k*) Because, according to the contentions of the plaintiffs error, the judgment on the demurrers, the verdict and the decree the enforcement of the claimed contract violates each and all of provisions of the constitution of this State and of the constitutio the United States in manner and form as set out in the answer cross bill filed by the Georgia Railway & Power Company and Georgia Railway & Electric Company, and the amendments ther and the intervention and cross bill filed by the intervenors herein

(*l*) Because the grant of the six-cents and seven-cents fares by railroad commission of Georgia in all of the territory served by railway companies, except as to transportation and fares to and fr College Park, made any rate contract theretofore existing (as pla tiffs in error contend) between the Mayor and Council of the C of College Park and the Georgia Railway & Electric Company the Georgia Railway & Power Company discriminatory; and the fore the said five-cents fare provision is illegal, unconsti
62 tional and void, and violates in manner and form alleged the State and Federal constitutional provisions as pleaded plaintiffs in error in their original and amended answer and c bill and the intervention, in that it discriminates against all of t other patrons of the lines of the Georgia Railway & Power Compa and especially against the intervenors herein named and against t municipalities and localities in which said intervenors reside.

(*m*) Because, according to the contention of the plaintiffs error, under the facts set out in the original and amended answer a cross bill, the said five cents fare contract is confiscatory becaus is not more than one-third of the real cost of the service, and a result thereof the deficiency in said cost must be borne either the said railway companies or a part of it will fall upon the int venors herein named, and to the extent that the said five-cents f lacks being a fair and just return for the service rendered, t Georgia Railway & Power Company is thereby deprived of its pr erty without due process of law and is denied the opportunity fully comply with its duties and obligations to the balance of patrons as a public service corporation.

(*n*) Because the judgments on the demurrers, the verdict and t decree, according to the contention of the plaintiffs in error, for the Georgia Railway & Electric Company and the Georgia Railw & Power Company to comply with a discriminatory, illegal and u constitutional contract, prohibited not only by the constitution a civil and criminal laws of this State, but as well by the constitu

f the United States, in manner and form as set out in the original nd amended answers and cross bills and in the intervention.

3 (*o*) Because it is undisputed that the limits of the City of College Park were extended in the year 1906; and the laimed contract between the railway company and the city could ot be extended, as plaintiffs in error contend, to include the erritory added to College Park at that time, and said extension act ould not withdraw said extended territory from the jurisdiction of he commission, as provided by the act of 1907; (1) Because the enorcement of the extension of the claimed contract over the territory dded in 1906 would be the denial of the commission's jurisdiction ver said territory as fixed and regulated by the act of 1907; and beause (2) the mere extension of the limits of the City of College ark does not extend the claimed contract so as to cover the added erritory and deny to that territory the jurisdiction of the commision.

(*p*) Because the Georgia Railway & Electric Company and the eorgia Railway & Power Company should have been granted their njunction on each and every one of the grounds set out in their ross bill and amended bill.

(*q*) Because each of the intervenors named herein should have een granted an injunction upon their cross bill, on each and every ne of the grounds therein set out, and the so-called five cents fare hould have been cancelled as prayed for by said intervenors.

(*r*) Because the Georgia Railway & Electric Company and the eorgia Railway & Power Company are perpetually enjoined from utting into effect the seven-cents fare, when no such fare was fixed nd authorized by the railroad commission of Georgia, on all of the ines of the said railway companies not covered by valid, subsisting ontracts, and are perpetually enjoined from charging a seven-cents are from all points within the present limits of the City of College Park to all points without, and from all points without the 4 present limits to all points within said limits; (1) although said claimed contract (as contended by the plaintiffs in error) id not make a contract between the Mayor and Council of the City f College Park and the said railway companies, fixing a five-cents are from all points within the City of College Park to all points with-ut, and from all points without to all points within the City of ollege Park. (2) According to the contention of the plaintiffs in rror, the so-called five cents fare contract was only with reference o fares from the southern limits of the said City of College Park to ome central point within the City of Atlanta. (3) That no conract as to fares was ever entered into with reference to points on said ines except that no greater fare than that of five cents for each assenger should be charged for passage from the southern limits of he City of College Park to some central point within the City of tlanta; no provision, as plaintiffs in error contend, was made for assage from any point without the City of College Park to any point ithin said city.

(*s*) Because, construing the provisions of the Act of 1907, pag
73 et seq., as valid, as was necessarily done by said judgments, ve
dict and decree, the whole of said act of 1907 becomes unconstitu
tional as fixing a discriminatory and illegal scheme of rates, there
violating sections 6463, 6464 and 6467 of the Code of Georgia
1910, and also in violation of the fourteenth amendment to th
constitution of the United States, in that it denies to plaintiffs
error, and each of them, the equal protection of the law there
guaranteed, in that the effect of this act in the present case is
charge all passengers boarding and alighting from the cars with
the limits of the City of College Park only five cents, whi
65 all other patrons, for a similar and less service, are charg
seven cents.

(*t*) Because the provisions of the Act of 1907, pages 73 et se
necessarily declared to be valid by said judgments, verdict an
decree, is illegal and unconstitutional as fixing a discriminato
and illegal scheme of rates, thus violating Sections 6463, 6464 an
6467 of the Code of Georgia of 1910; also in violation of the fou
teenth amendment to the constitution of the United States, in th
it denies the plaintiffs in error, and each of them, the equal prote
tion of the laws, in that the effect of the act in the pending case
to charge patrons boarding and alighting from cars within the Ci
of College Park five cents, while other patrons, for a like and le
service, are charged seven cents.

(*u*) Because the injunction in this case was sought solely up
the ground that the street railway companies were violating the
contract with the City of College Park; and if, as contended by th
plaintiffs in error, that contract was originally void or thereaft
was terminated, then there ought to be no injunction, although th
street railway companies did not have authority to initiate rate
and it is contended by the plaintiffs in error (1) that the claime
contract was void originally; and (2) if not void originally, it ha
been terminated by timely notice.

(*v*) Because a seven-cents fare was, by the railroad commissi
of Georgia, fixed upon all the lines of the street railways except su
lines or parts of lines as were affected by a valid subsisting contra
and if the contract herein was void originally or had terminated,
claimed by the plaintiffs in error, then the rate of seven cents fix
by the commission would be the rate fixed for all lines of the stre
railway companies, including that part of the lines of th
66 street railways included within the present limits of the Ci
of College Park; and it would therefore be error for the co
to enjoin the collection of the seven cents fare upon the lines
the said street railways.

(*w*) Because, if there was in existence a valid, subsisting contra
between the City of College Park and the said street railway co
panies, the intervenors herein were not parties to such contract an
therefore bound by none of its provisions; and the charge of sev
cents against the intervenors, while the patrons boarding or alig

ng from the cars within the corporate limits of the City of College Park were charged only five cents, was a gross discrimination against the intervenors and had the effect of denying to intervenors the equal protection of the laws, as guaranteed by the constitution of the State of Georgia and the constitution of the United States, as set up in the original and amended answers and cross bills herein.

(*x*) Because, if the contract was originally a binding contract between the parties, it was a contract at will and has, before the bringing of this suit, been terminated by timely notice upon the part of the street railways; and if such contract was terminated, as contended by the plaintiffs in error, then there was, at the time of the filing of this suit, no contract in existence between the Mayor and Council of the City of College Park and the street railways, and, under the order of the commission, a seven-cents fare was the legal and just fare to be charged to and from College Park.

(*y*) Because, if the City of College Park had the right to make a contract with the street railways, that right was limited to making a contract for a fixed date or time not too long extended, and the effort to make a perpetual contract, as is here endeavored to
67 do, makes said contract void; and if said contract is void, as is contended by the plaintiffs in error, then at the date of the bringing of this suit there was no contract between the Mayor and Council of the City of College Park and the street railways, and such claimed contract could not therefore be the basis of the injunction granted in this case, and the seven-cents fare fixed by the commission would extend to and from within the limits of the City of College Park, as well as over all the other portions of the lines of said street railways.

(*z*) Because the claimed contract between the Mayor and Council of the City of College Park and the street railway companies only provided for a five-cents fare from the southern limits of College Park to some central point in the City of Atlanta. The defendant in error set up and the court sustained an order of the commission establishing and enforcing the same fare between two points in both directions, and by reason thereof contended that as a result of said order a five-cents fare should be charged from Atlanta to College Park. The sustaining of this contention was a ruling by the court that this power of the commission to grant this order adding transfers to the contract rate of five cents was conferred by the act of 1907. Said act so construed increases the burden, by enlarging the scope, of said five-cents fare contract, in that two five-cents trips, instead of one, was provided for; thereby impairing the obligations of said contract, in violation of article 1, section 10, of the constitution of the United States.

(*aa*) Because said five-cents fare contract was impaired in violation of the constitution of the United States, article 1, section 10, by the order of the commission giving to the College Park patrons transfers in addition to the five-cents fare claimed under the
68 contract. The contract provided for a straight fare of five cents, and not at all for transfers. The commission ordered

the issuance of transfers to each five-cents College Park patron d
manding them, although all the other patrons of the railways co
enjoy transfers only when paying a seven cents fare.

The addition of transfers by the commission's order, acting und
the jurisdiction claimed under the act of 1907, increased the burd
of the five-cents fare contract to the extent of the transfers so adde
The act of 1907, so construed, and the transfer order of the comm
sion impaired the obligations of the five cents fare contract, in viol
tion of article 1, section 10, of the constitution of the United State
and to the extent of the value of said transfer took the property
the railways for the use of the public without just compensation.

This bill of exceptions contains all the evidence necessary to
clear understanding of the errors complained of. The defendant
error herein is the Mayor and Council of the City of College Par
the Georgia Railway & Electric Company and the Georgia Railw
& Power Company and the individual intervenors herein are ma
parties plaintiff in error.

The plaintiffs in error herein designate and specify as material
a clear understanding of the errors complained of, the following par
of the record, to wit:

(1) The original petition of the Mayor and Council of the Ci
of College Park, together with the date of filing and the exhibits a
tached thereto.

(2) The two amendments to the original petition of the May
and Council of the City of College Park, with the order thereon an
the exhibits attached thereto.

(3) The demurrers of the Mayor and Council of the City o
69 College Park to the answer and cross bill of the Georgia Rai
way & Power Company and the Georgia Railway & Electr
Company; together with the orders and judgments thereon.

(4) The renewed demurrers of the Mayor and Council of the Ci
of College Park to the amended answers and cross bills of the Georg
Railway & Power Company and the Georgia Railway & Electr
Company, together with the judgments and orders thereon.

(5) The demurrers of the Mayor and Council of the City of Co
lege Park to the answer and cross bill of the individual intervenor
together with the judgments and orders thereon.

(6) The answer and cross bill of the Georgia Railway & Powe
Company and the Georgia Railway & Electric Company.

(7) The amendment to the answer and cross bill of the Georgi
Railway & Power Company and the Georgia Railway & Electr
Company, together with all orders and acknowledgements thereon.

(8) The answer and cross bill of the individual intervenors, to
gether with the order thereon permitting them to be made parties
defendant and permitting the filing of their answer and cross bill.

(9) The verdict of the jury and the judgment and decree of th
court entered thereon.

And now come, within the time allowed by law, the Georgia Railway & Power Company and the Georgia Railway & Electric Company, and the individual intervenors hereinabove named, to wit: J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Wills, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn,
70 David Hawn, P. E. Davis and C. Roessler, and present this their bill of exceptions and pray that same may be certified as true, and that the clerk of the superior court of Fulton county be directed to make copies of the parts of the record specified, in order that the errors complained of may be considered and corrected.

COLQUITT & CONYERS,
J. PRINCE WEBSTER,
ROSSER, SLATON AND HOPKINS,
Attys. for All the Plaintiffs in Error.

Certificate.

I do certify that the foregoing bill of exceptions is true, and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Fulton county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the present term of the Supreme Court of Georgia, that the errors complained of may be considered and corrected.

This January 30, 1922.

GEO. L. BELL,
Judge S. C. A. C.

We hereby acknowledge due and legal service of the within bill of exceptions; copy received; all other and further service waived.
This January 30, 1922.

GEO. P. WHITMAN,
Atty. for Defendants in Error.

P. O. Address: 608 Atlanta Trust Co. Bldg., Atlanta, Ga.

71 Filed in office Jan. 31, 1922.
ARNOLD BROYLES,
Clerk.

GEORGIA,
Fulton County:

I hereby certify, That the foregoing bill of exceptions hereunto attached, is the true original bill of exceptions in the case stated, to wit, Georgia Railway & Power Co. et al., plaintiff in error, v. The

Mayor & Council of City of College Park, defendant in error, a
that a copy hereof has been made and filed in this office.

Witness my signature and the seal of court affixed this the 13 d
of Feb., 1922.

[SEAL.] ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
ex Officio Clerk City Court of Atlanta.

[Endorsed:] Case No. 3081. Supreme Court of Georgia. Marc
1922. Georgia Railway & Power Co. et al. versus Mayor & Coun
of College Park. Bill of Exceptions. Filed in office January 31
1922. Arnold Broyles, C. S. C. Filed in office Feb. 15, 1922. W
E. Talley, D. C. S. C. Ga.

72 GEORGIA,
Fulton County:

To the Superior Court of said County:

The petition of the Mayor and Council of the City of College Par
a municipal corporation of said State, respectfully shows to the cou
the following facts:

1. That the Georgia Railway & Power Company, a corporation
hereinafter called the power company, has its principal office in sa
county, and there operates a line and lines of street railway.

2. That the Georgia Railway and Electric Company, a corpo
tion, hereinafter called the electric company, has its principal offi
in said county.

3. That on the 29th day of July, 1901, your petitioner grante
to E. Woodruff et al., a franchise contract, which franchise contra
was transferred on the 1st day of February, 1902, to the Atlan
Railway and Power Company; that said franchise contract wa
amended on the 3d day of April, 1902; that the said franchise co
tract was according to the information of petitioner trans-
ferred to the Georgia Railway & Electric Company, its successo
and assigns; that such transfer was consented to by the City of Co
lege Park, the petitioner, on the 15th day of April, 1902; that a
copy of said franchise contract is hereto attached as a part hereof an
marked Exhibit "A."

4. That on the 6th day of November, 1905, your petitioner grante
to the Georgia Railway & Electric Company its successors and assigns
the franchise contract set forth as Exhibit "B" hereto attached as a
part hereof.

5. That for several years past the said power company has bee
operating the property, rights and franchises of the said Electri
Company and the street railway lines of the Electric Company, in
and around the city of Atlanta, including its lines in the city o
College Park, under and by virtue of some character of lease
73 the full terms and effect of which are unknown to your peti-
tioner; that your petitioner is informed, believes and s

harges that said lease arrangement was made on or about the year 912; and that since that time the system of railways has been perated by the power company under said arrangement.

5. That on or about the year 1906, before the electric company ad finished the construction of its double track in College Park hich it had the right to do under the above mentioned franchise ontract of 1905, the electric company granted free transfers to assengers to and from College Park, to and from other transfer oints on the lines of the said electric company.

6. That when the said electric company's line to Hapeville was ompleted free transfers were given to passengers to and from ollege Park and to and from Hapeville.

7. That from and after the making of the franchise contract of 905, as above set forth, the said electric company began to charge ve cents fare to Atlanta from College Park, and from Atlanta to ollege Park, and continued this course until the lease agreement bove mentioned was made; and that since that time its lessee, the id Power Company has continued to charge five cents fare to tlanta from College Park, and from Atlanta to College Park; that he construction placed upon the said franchise contract of 1905, bove set forth, by the subsequent conduct of the parties, the said lectric company and the said power company as well as the said city, our petitioner, shows that said contract covered fares from College ark to Atlanta and — versa.

8. That there has never been any discontinuance of the charging f a five cents fare for such service either by the said electric com- any or the said power company.

9. That on the 23d day of December, 1909, the railroad commis- ion of Georgia passed what is known as general order number 14; that under the laws of this State said general order number 74 14 has the effect of law, as relating to the subject matter of said order; that said general order number 14 is hereto ttached as a part hereof and marked Exhibit "C."

10. That when the said power company took charge of the electric ompany's system of street railway, and begun to operate the same, t likewise kept in *begue* the free transfer privilege to and from ollege Park, the same as was done by the said Electric Co., and since hat time there has been no cessation of the same.

11. That sometime during the year 1918, the said power com- any filed with the railroad commission of Georgia application set- ing forth certain facts and circumstances which it claimed entitled t to charge six cents fare where it was before charging five cents fare, nd to charge two cents for all transfers; and prayed the said com- ission to put such new schedule of rates into operation.

12. That the municipalities of Atlanta, Decatur, Hapeville, East oint, College Park and others, were duly notified of said application;

and all or some of them, including College Park, took part in defe ing against said increase.

13. That a copy of this application is attached to a petition f mandamus, by the said power company against the said railro commission of Georgia, said case being number — of this court; a petitioner not having the time to copy and attach a copy of the sa to this petition, hereby refers to the same, adopts the same as a m full and complete illustration and exhibit of the facts therein forth, for the purposes herein set forth.

14. That upon the first hearing upon said petition, before the s commission, the said commission held itself to be without jurisdict to grant the relief therein prayed for, on account of the vari
75 franchise contracts which had been entered into by the s power company or its predecessors.

15. That thereupon the said power company filed in this court petition for a mandamus against the said commission, asking t court to require the said commission to take jurisdiction of t same; that upon the hearing of said mandamus the trial judge den the mandamus absolute; that thereupon the said power compa appealed said case to the Supreme Court of Georgia; that the s Supreme Court affirmed the judgment in part and overruled it part; that the effect of the said judgment of the Supreme Court w to hold that the franchise contract of the City of College Park w valid and subsisting when the Act of 1907 was passed; that its e istence and effect was to deprive the railroad commission jurisdiction to increase the College Park fares; and that so far College Park was concerned the judgment of the trial court w affirmed.

16. That in the said case in the superior court and in the Supre Court, while your petitioner was not an actual party, it was a party that it was being represented by the said railroad commission; th it appeared in said case by counsel; that it assisted in the defense the same, that it was estopped by the final judgment in said case th the estoppel between it and the said power company was mutual; a that the said power company is estopped from attaching the fi judgment in said cause; and the judgment therein is res adjudic between your petitioner and the said power company, by reason the facts herein set forth.

17. That on or about the 2d day of April, 1919, the said railro commission finally acted upon the said application of the power co pany, under the mandamus, and entered an order therein, the form part of which is hereto attached as a part hereof and marked Exhi "D."

76 18. That on or about the 15th day of April, 1919, the sa power company filed with the said railroad commission petition asking to withdraw free transfers from its College Pa traffic, claiming that it's not bound to give free transfers by a contract with said city, and claiming that it was discriminatory

e free transfers by any contract with said city, and claiming that was discriminatory to give free transfers. That the said city deded against said application, claiming that it was not disminatory in favor of College Park for the said power company to e free transfers, but that it would be discriminatory to take them ay from them, inasmuch as they were paying the highest fare uired of them by law, while other parts of the public were having e transfers while paying likewise the highest fare required by . That upon hearing the said commission finally denied the said plication.

19. That recently the said power company filed another application h the said railroad commission praying for the right to charge ht cents fares, except as prohibited by the contracts with Decatur d College Park; that upon a hearing the said commission pertted it to charge a fare of seven cents where a six cents fare had eviously been charged, with one or two exceptions.

20. That on or about the 5th day of October, 1920, the said electric mpany and the said power company served upon the authorities of llege Park, a certain notice in writing, copy of which is hereto ached as part hereof, and marked Exhibit "E."

21. That two regular sessions of the general assembly of Georgia ve been held since the ruling of the Supreme Court in the said ndamus case; that the general assembly of Georgia has not passed any measure or bill nullifying the said franchise contract with your petitioner, or nullifying the effect of the proviso in the act of 1907, or giving the said commission the power to inease College Park fares, or increasing said fares itself, or giving any her agency of the State the power to do so; that on the other hand e general assembly of Georgia, expressly refused to nullify the ect of said proviso or to give the railroad commission jurisdiction r rates fixed on such contracts, and again exercised the sovernity of this State in favor of these contracts.

22. That conduct on the part of said power company in line with eir threat set forth in said written notice, Exhibit "E" will be an solute violation of said general order number 14 of the commisn, Exhibit "C," in that it is thereby required not to change the tus of fares, transfers or service, then existing either by virtue of luntary agreement or order of the commission; that at the time d general order number 14 was passed the said electric company e predecessor of said power company was charging a five cents re to and from College Park, and giving free transfers; and that order of the said commission nor of any other functionary of the vernment has given it the power to change the said status.

23. That conduct on the part of said power company in line with eir threat set forth in said written notice, Exhibit "E," will be an solute violation of said order of the commission, as set forth in der of the commission, Exhibit "D," in that by said order it was quired to continue to charge only a five cents fare as to College

Park, and to give free transfers as before practiced by said p
company.

24. That conduct on the part of the said power company in
with their threat set forth in said written notice, Exhibit "E,"
be an absolute violation and breach and continued br
78 of the franchise contract set forth in Exhibit "A" and
hibit "B;" that a seven cents fare has not been legally
regularly fixed as to College Park by anybody or any agency o
State having the power so to fix it; that any effort to put such a
into effect by the said power company, or by anybody else at
time, is in violation of law, and in violation of the terms and
ditions of said franchise contracts, that said contracts are now
have all the while been valid contracts; and at the time of filin
this bill they are valid contracts and are fully binding upon
said electric company and the said power company; and the
power company is estopped to attack their validity.

25. That said electric company and the said power company
all the while occupied the College Park street, and operated its
in said city under and by virtue of said franchise contracts; and
and each of them are now estopped from denying their abs
validity.

26. That any such violation of the terms of said contract wi
a positive violation of the laws of said State, on the part of the
power company and said electric company.

27. That said power company and said electric company thre
to be guilty of a breach of said franchise contract and successive
recurring breaches of the same; and gives no reason or justifica
of said threats except that the said contract is now invalid; it
not pretend that any new rate or any rate of seven cents has
regularly or legally put in operation; that it itself has no powe
regulate the rates of fare; that it has received no authority from
said commission, nor from anybody else to put said increased
into operation, and that any effort of it to put in operation
increased fare is in absolute violation of said contract and of
law governing in such cases.

79 28. That said contract was made by the State for
benefit of the general public, and every member of the gen
public has an absolute right to its complete enforcement and
formance; that any effort to put into operation the threats mentio
will cause untold confusion, strife, disorder, and there are no
quate means of avoiding such consequences, except by the inter
tion of an injunction.

29. That there is most likely to be a multiplicity of suits
actions between said power company and various members of
public, if said threats are put into operation.

30. That the damages incident to the violation of said contr
and the recurring violations thereof, will be impossible of comp

ion; that the injury therefrom will be irreparable; that there is no ust or adequate means or method of measuring either the extent of he damage or the extent of the injuries accruing therefrom.

31. That any such effort on the part of said power company to put nto operation such increased fare will result in an impairment of id contract.

32. That any such effort on the part of said power company to put nto operation such increased fare will result in taking the property f your petitioner, and the property of the members of the public, ithout due process of law.

33. That any such effort on the part of the said power company o put into operation such increased fare will be an unauthorized and llegal effort to exert the sovereignity of this State in opposition to he said contract.

34. That the community of College Park has been largely built p and populated on the strength of a five cents street car fare; that he same has been in operation there for a long time; and any unuthorized disturbance of the same will have a very great disorganizing and depressing result on the values of property, and upon the comfort and convenience of the local public.

35. That said power company is not entitled to earn a profit on very part of its entire system, that if it is in fact losing money on the College Parff traffic, which your petitioner denies, the railroad commission has fixed a certain increased fare on its whole system which s presumed to be a fair return on its whole investment; and the fact hat a less fare is operative in College Park and Decatur is of no oncern to it.

36. That the service in and for College Park is inadequate, conrary to the orders of the railroad commission, less adequate than required by the railroad commission and is not worth more than five ents, as a general proposition.

37. That there will be a multiplicity of suits and actions incident o such threatened violation and violations of said contract.

38. That there is no adequate remedy at law either for the protection of your petitioner, or of the members of the public, as to the matters herein set forth.

39. That your petitioner waives discovery as to this bill.

40. That your petitioner offers to do equity, and to submit itself to the imposition of whatever equitable requirements the chancellor will see fit to impose upon it.

41. That the threatened conduct on the part of said companies will be in violation of art. 1, sec. 3, par. 2 of the constitution of Georgia, which provides as follows: "No law impairing the obligation of contracts * * * shall be passed."

42. That the threatened conduct of the said companies will be
violation of art. 1, sec. 10, par. 1, of the constitution of the Un
States which provides as follows: "No State shall pass any law
pairing the obligation of contracts."

81 43. That the threatened conduct of the said companies w
be in violation of art. 1, sec. 1, par. 3, of the constitution
Georgia, which provides as follows: "No person shall be deprived
property, except by due process of law."

44. That the threatened conduct of the said companies will be
violation of the fifth amendment to the constitution of the Un
States, which provides as follows: "No person shall be deprived
property, without due process of law, nor shall private property
taken for public use without just compensation."

45. That the threatened conduct of the said companies will be
violation of the fourteenth amendment to the constitution of
United States, which provides as follows: "Nor shall any State
prive any person of property, without due process of law."

46. That the threatened conduct of the said companies will be
violation of art. 1, sec. 3, par. 1, of the constitution of Ga. wh
provided as follows: "Private property shall not be taken, or da
aged, for public purposes without just and adequate compensa
being first paid."

Wherefore, your petitioner prays as follows:

1. That said electric company and said power company be
strained and enjoined from putting into operation any or all of th
threats set forth in said Exhibit "E" or any part thereof.

2. That said injunction shall continue to operate as against a
increase of fares from College Park to Atlanta, and vice versa, un
the same is allowed by the laws of this State.

3. That said electric company and said power company and ea
of them be restrained and enjoined from in any manner violat
the franchise contracts set forth in Exhibit "A" and "B," and ea
of them.

82 4. That said companies and each of them be restrain
and enjoined from in any manner changing the pres
status as to fares transfers or service as to your petitioner and t
College Park lines.

5. That if it has not already been decreed by the courts, that
be decreed that said franchise contracts set forth in Exhibits "
and "B," and each of them, are valid and subsisting contracts a
now binding between your petitioner and each of said companies.

6. That said electric company and the said power company
required specifically to perform said franchise contracts set forth
Exhibits "A" and "B"; and each of them, and every part of ea
of them.

7. That any and all further relief, both legal and equitable, be granted to your petitioner which may be warranted by the above stated facts.

8. That process do issue requiring the said Georgia Railway & Electric Company and the said Georgia Railway & Power Company, and each of them to be and appear at the next term of this court to answer this bill.

ALFRED C. BROOM,
Petitioner's Atty.

GEORGIA,
Fulton County::

In person before the undersigned authority came S. A. Johnson, Mayor of the City of College Park, with full authority to make this affidavit and knowing the facts, who being sworn, deposes and says that the facts set forth in the above and foregoing petition are true. This the 18th day of Oct. 1920.

S. A. JOHNSON.

Sworn to and subscribed before me, this the 18th day of Oct., 1920.
O. E. McCONNELL,
N. P. Fulton County, Ga.

83 Read and considered. Let the above and foregoing bill be filed. Let the said defendants, and each of them, show cause before me or the judge hearing motions at 9:30 a. m. on the 30 day of Oct., 1920, why the prayers of the above petition be not granted, and in the meantime and until further order of court they and each of them are restrained as prayed for.
This the 18th day of Oct., 1920.

GEO. L. BELL,
Judge S. C. A. C.

GEORGIA,
Fulton County:

We and each of us the undersigned defendants in the above bill and case hereby expressly waives process and the issuance of and service of process and acknowledge service of the above and foregoing bill; copy received, and any and all further service waived. This the 18th day of Oct., 1920.

GA. RY. & POWER CO.,
GA. RY. & ELECTRIC CO.,
By COLQUITT AND CONYERS,
Attys. for Defts.

(EXHIBIT "A.")

Grant of Town of College Park to Lay Track on Chert Road.

Resolved: That the petition of E. Woodruff, Joel Hurt and Thomas K. Glenn, their associates, successors and assigns, for the right to lay a single track, with turnouts and switches, at such points

and of such length as they may now or hereafter deem proper a
expedient, and operate same with an overhead trolley system on t
east side of the chert road to a point near the union depot or throu
the town limits of College Park, is hereby granted, subject
84 the following conditions:

1st. The overhead trolley wire to be supported by brackets on po
on the east side of the street.

2nd. The work to be commenced in sixty (60) days and the li
to be put in operation within twelve (12) months.

3rd. The paving between the rails and two feet on each side to
relaid and maintained by the petitioners in the present good co
dition. If at any time the part of the road occupied by the p
titioners should become in bad condition, and should remain so f
ten days after being notified by the proper town authorities to r
pair same, then the town shall have the right to make the repairs
the expense of the petitioners.

4th. The rail to be used to be the "Shanghad T" of not less th
sixty pounds to the yard, and not less than six inches deep. T
ties to be new and creosoted. The entire work to be done under t
supervision and to the satisfaction of the mayor and council.

5th. Should the petitioners fail to operate a daily schedule at a
time for a period of thirty days, the town shall have the right
remove the tracks from the road at the expense of the petitioners.

6th. This grant is not to be exclusive, the town reserving t
right to grant other street car franchises along the same road, b
this is not to be construed as intending to reserve the right to gra
to other roads the right to use the tracks or road bed of the p
titioners, except to cross same.
July 29, 1901.

Transfer of Grant to Atlanta Railway & Power Company.

Atlanta, February 1, 1902.

For value received the above and foregoing franchise wi
85 all its rights and privileges is hereby transferred and
signed to the Atlanta Railway & Power Company.

JOEL HURT.
E. WOODRUFF.
T. K. GLENN.

Amendment to Grant.

Resolved, That section number 4 of franchise granted July 29
1901, to E. Woodruff, T. K. Glenn and Joel Hurt, be amended
read as follows:

"Section Number 4. The rail to be used to be 4½ inch T of not less than sixty (60) pounds to the yard, the ties to be new and creosoted. The entire work to be done under the supervision and to the satisfaction of the mayor and council."

April 3, 1902.

Consent of Town of College Park to Transfer of Grant to Georgia Railway and Electric Company.

Be it ordained that the Mayor and General Council of College Park hereby consent to transfer to the Georgia Railway & Electric Company, its successors and assigns, the grant and consent heretofore made by ordinance approved July 29, 1901, to Joel Hurt, Thos. K. Glenn, and E. Woodruff, to construct, equip and operate a street and suburban railway along the roads and streets named in said grant, and the consent and permission contained in said grant are hereby regranted and reconsented to the Georgia Railway & Electric Co., its successors and assigns, it being expressly understood that said street railway is to be completed and in operation not later than July 29, 1902.

I, W. M. Hutchinson, clerk of the council of the City of College Park, certify that the foregoing is a true copy of an ordinance unanimously adopted at a meeting of the Mayor and Council of 86 College Park, held April 15, 1902, a quorum being present.

WM. M. HUTCHINSON.

(EXHIBIT "B.")

Grant by Town of College Park to Georgia Railway & Electric Co. to Double Track Its Line Along Chert Road.

City of College Park, Council Chamber, Nov. 6, 1905.

Ordinance No. —.

Section 1. Be it ordained by the Mayor and Council of the City of College Park, That the right, permission, consent and franchise are hereby granted to the Georgia Railway & Electric Company, its successors and assigns, to convert its present single track line of electric railway within the limits of the city of College Park into a double track line of electric railway; and for this purpose to construct, ele-trically equip and operate such double track line of electric railway, and to make such changes in the existing structures as may be necessary to the equipment and operation of such double track line, and to do all other acts and things necessary and incident to the equipment, maintenance and operation of a system of double track electric railway in said City of College Park, provided:

1st. That the course of said double track line shall extend from the northerly limits of the City of College Park, along the street

known as the chert road and along the its continuation as a public road in Clayton county, to the southern limits of the city of College Park.

2nd. That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the City of Atlanta.

3d. That said double tracks be located on the east side of said chert road and of said public road and as near to each other as practicable.

87 4th. That said chert road and said public road, so occupied by said double tracks shall be restored to as good a condition as said roads may be in before the laying of said double tracks and maintained as provided in section 3 of franchise granted Joel Hurt et al. July 29, 1901, and transferred to Georgia Railway and Electric Company by said Joel Hurt et al. July 29, 1901, and transferred to Georgia Railway and Electric Company by said Joel Hurt et al. April 15, 1902.

5th. That no light weight rail be used in the construction of said double tracks than is now used in the present single track.

6th. That an abandonment or a failure to operate any portion of said double track for a period of thirty days by said Georgia Railway & Electric Company, its successors and assigns, except occasioned by act of God, the public enemy, or strikes, shall work a forfeiture of all franchises owned by said company in said City of College Park.

Sec. 2. Be it further ordained. That said Georgia Railway & Electric Company shall have fifteen days from this date within which to accept the foregoing franchise; and if its acceptance within that time be signified in writing, then said Georgia Railway & Electric Company, its successors and assigns, shall have twelve months within which to equip and operate said line of double tracks; but if said double track line shall not be put in operation within twelve months from the date of the acceptance in writing of the foregoing franchise, then said franchise shall stand revoked.

Sec. 3. Be it further ordained. That the life and duration of this franchise herein granted shall be coincident with the franchise now owned by said electric company in said City of College Park.

Sec. 4. Be it further ordained. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

88 Approved by order Council College Park, Nov. 6, 1905.

(Signed) W. WOODS WHITE,
Mayor.

J. M. MASON,
Clerk Council.

Acceptance of Grant.

Atlanta, Ga., November 18, 1905.

Honorable Mayor and Council of College Park,
College Park, Ga.

DEAR SIRS:

In accordance with the requirements of section 2 of the ordinance adopted by your Honorable body, November 6, 1905, providing for the construction of a double track railway line on the chert road through the City of College Park by this company, the Georgia Railway & Electric Company hereby accepts said ordinance and the franchise granted it by the said ordinance, and agrees to the terms and provisions of said ordinance, and agrees to construct electrically equip and operate the double track line of electric railway as provided by said ordinance.

Yours very truly,

P. S. ARKWRIGHT,
President.

EXHIBIT "C."

Office of the Railroad Commission of Georgia.

Atlanta, Dec. 23, 1909.

File No. 9162.

Circular No. 314 is hereby amended by substituting therefor general order No. 14, which becomes effective this day, as follows:

General Order No. 14.

All rates now in effect or which may hereafter become effective, which are not higher than the maximum rates prescribed by this commission, whether such rates are the result of voluntary action upon the part of any company, corporation or person subject to the jurisdiction of this commission, or otherwise, are hereby established as the rates of the railroad commission of Georgia, and no such rates shall be discontinued nor raised without the consent of the railroad commission first being obtained, but all such rates shall continue in force without hindrance, the same as other rates prescribed by the commission. And any and all facilities, privileges or service, now in effect or practiced, or hereafter made effective, extended or practiced which give, grant, extend or allow patrons, shippers, or other persons transacting business with said companies, corporations or persons as much or more of the privileges, facilities or service to which they are entitled by law or by any rule, regulation or order of this commission, whether such privileges, facilities or service are given, granted, extended or allowed as the

result of voluntary action upon the part of such companies, cor
rations, or persons, or otherwise, are hereby established as the requ
ments of the railroad commission of Georgia, and no such privile
facilities or service shall be discontinued without the consent of
railroad commission first being obtained, but all such privileges,
cilities or service shall be given, granted, extended or allowed with
hindrance, the same as other requirements of this commission; p
vided that nothing herein contained shall operate as repealing in
way the provisions of passenger Rule No. 7.

H. W. HILL,
Chairman.

By order of the Board,
CAMPBELL WALLACE,
Secretary.

90 EXHIBIT "D,"

Order of Railroad Commission.

Upon consideration of the record in the above stated applicati
including the decision of the Supreme Court, on appeal in the ma
damus proceedings brought by the company and the mandam
issued by the Hon. Geo. L. Bell, judge of the superior court of Fu
ton county, and also an opinion this date adopted by the commissi
containing its findings of facts and conclusions therein with resp
to the issues involved, which said opinion is hereby referred to a
made a part hereof, the commission hereby amends its order da
August 14, 1918, by adding thereto after schedule O, the follow
rate schedule, together with the conditions and limitations provi
herein:

Schedule P, Street Car Fares.

The Georgia Railway & Power Company is hereby authorized
charge as its maximum passenger fare the sum of — (6¢) cents p
passenger, where a five cent (5¢) fare is now charged, for one co
tinuous ride on its passengers cars over and on its lines of railway,
any zone thereof as now prescribed, except such fares as are fixed
the contracts between the company and the cities of Decatur and C
lege Park, which shall remain as so fixed, provided, however, th
the Georgia Railway & Power Company shall put on sale and sell
its officers and with its conductors books of tickets, containing
coupons, each good for one ride and transfer if desired, at the pr
of one ($1.00) dollar per book.

Order further, that no charge shall be made in the existing ru
and practices of said company as to the granting of transfers or t
transportation of infant children.

Order further, that the effective date of this amendment
91 the commission's order dated August 14, 1918, shall be Au
14, 1919, provided the company shall on or before 12 o'cl

oon, April 9, 1919, file with this commission a duly authorized and xecuted agreement of stipulation to pay as called for by the commis- on sixty (60) per cent of the total cost of any appraisal of its prop- rties, and audit of its books, which may be ordered and directed by he commission under any agreement or understanding hereinafter ntered into between the commission and the city of Atlanta, Ga.

Order further, that three days prior to the effective date of this rder the company shall cause to be posted in all of its cars notice to he public of the authorized increase in street car fares and the effect- ve date of such increases.

C. M. CANDLER,
Chairman.

By order of the Commission.
ALBERT COLLIER.

EXHIBIT "E."

To the Mayor and Council of the City of College Park and the City of College Park:

You are hereby notified that on and after the 20th day of Oct., 1920, the fare to and from and between Atlanta and College Park, n the line operated by the Georgia Railway & Power Company, will e at the rate of seven (7) cents.

Denying the validity or legality of any so-called contract provision imiting the fare to five (5) cents from the southern limits of the ity of College Park to some central point in the City of Atlanta (set ut in the ordinance of the Mayor and Council of the City of College ark November 6, 1905); you are notified that if the provision with eference to fare was binding at any time, it is not now binding or egal and is hereby terminated from and after the above named ate.

2 This 5th day of Oct., 1920.

GEORGIA RAILWAY & POWER COMPANY,
By P. S. ARKWRIGHT,
President.
GEORGIA RAILWAY & ELECTRIC COMPANY,
By JOHN C. HALLMAN,
Vice-President.

Service of the foregoing notice acknowledged this Oct. —, 1920.

Filed in office this the 18th day of Oct., 1920.

T. C. MILLER,
D. Cl'k.

(*Amended Petition.*)

GEORGIA,
Fulton County:

And now comes the plaintiff in the above stated case, and by le of the court amends its petition in the above stated case and alleges follows:

53. That the documents attached to and following this amen ment, and marked Exhibit J, constitute a full, true, complete a accurate transcript and copy of the whole record in the case of Ge gia Railway & Power Company v. Railroad Commission of Geor et al., being number 40,900 Fulton Superior Court; said record be that referred to and adopted in paragraph 13 of plaintiff's origin petition, including the various pleadings, ordered and other do ments therein as shown by the exhibit mentioned.

ALFRED C. BROOM,
Pl'ff's Atty.

GEORGIA,
Fulton County:

In person before the undersigned authority, came S. A. Johns Mayor of the City of College Park, who on oath deposes and s that the above and foregoing amendment is true.

S. A. JOHNSON.

Sworn to and subscribed before me, this 2nd day of Novemb 1920.

R. L. PROCTOR,
N. P. State at Large, Georgia.

93 Read and considered. Let the above and foregoing amen ment be filed, and the same is hereby allowed subject to o jection. This 4th day of November, 1920.

J. T. PENDLETON,
Judge S. C. A. C.

EXHIBIT "J."

STATE OF GEORGIA,
County of Fulton:

To the Superior Court of said County:

The petition of Georgia Railway & Power Company shows as fo lows:

1. The Georgia Railway & Power Company is a resident of th county of Fulton incorporated under the general laws of this St incorporating street railway companies, authorized and empower by its charter to operate, construct and maintain street railways a electric plants for the generation of heat, power and light.

. Under said charter, the Georgia Railway & Power Company r operates and maintains, and has for years past operated and intained a system of street railways, occupying various streets and rate rights-of-way in the city of Atlanta, and in the towns of eatur, Edgewood, Kirkwood, East Point, College Park and Hape-e, and on certain public roads, highways and private rights of way he counties of Fulton and De Kalb, operating said railway system essee of the Ga. Railway and Electric Company.

. The Railroad Commission of Georgia, is a body of public rials, created by the laws of Georgia, with its domicile in the nty of Fulton, said State, consisting of five commissioners, to wit, M. Candler, George Hillyer, Paul B. Trammell, John T. Boifeuil-and J. A. Perry.

. Prior to the act of 1907, it was within the jurisdiction of the railroad commissioners, vested exclusively in them, to determine what was just and reasonable rates and charges to be observed by all railroad companies doing business in this te; and it was further the duty of said commissioners to make sonable and just rates of freight and passenger traffic to be ob-ved on the railroads thereof; and to make reasonable and just rates l regulations to be observed by all railroad companies doing busi-s in this State as to charges for the necessary handling and de-ering of all freight; to make such just and reasonable rules and ulations as may prevent unjust discrimination in the transporta-n of freight and passengers on the railroads in this State, and to ke just and reasonable joint rates for all connecting railroads ng business in this State, and for all traffic or business passing m one of said roads to another.

. By an act approved August 23, 1907, enlarging the duties of l railroad commission, the powers and duties of that body were arged as follows:

"The powers and duties hereinbefore conferred by law when the lroad commission *are* hereby extended and enlarged so that its thority and control shall extend to street railroads and street rail-d corporations, companies or persons owning, leasing or operating eet railroads in this State; provided, however, that nothing herein ll be construed to impair any valid, subsisting contract now in ex-ence between any municipality and any such company, and pro-ded that this section shall not operate as a repeal of any existing unicipal ordinance." (Section 2663.)

6. After the passage of this act of 1907, subject to the provisos therein, it was within the power, and it was the duty said railroad commission to make, to be observed by the Georgia ilway & Power Company a schedule of just and reasonable rates charges for transportation, and from time to time to review said es and charges, increasing or lessening the same as the occasion ght demand, so that at all times the rates, fares, and charges of

said Georgia Railway & Power Company should be just and rea
able, both as to the said power company and to its patrons, the pub

7. The Atlanta Street Railroad was Atlanta's original and pr
cipal street railway. It included the line of Peachtree and Wh
hall streets, Decatur street, Ponce de Leon Avenue, Mitchell Str
Nelson Street, Peters and Broad Streets, Capitol Avenue and ot
streets.

8. On January 1, 1869, the city granted consent to this st
railway company to occupy the streets of said city, by an ordina
one of the conditions of which was as follows:

"4th. The charges for passage on said road shall not exceed two
cents for any through line and not exceeding ten cents for half li
or short distances."

(This appears in City Code of 1899 as Section 1314, and in C
Code of 1910 as 2697.)

9. On December 18, 1882, the City of Atlanta granted its c
sent to the Metropolitan Street Railway Company to occupy certa
streets upon condition that "franchises granted subject to the c
ditions and limitations of ordinances heretofore passed in refere
to the Atlanta and Gate City Street Railroad Companies."

10. On July 4, 1887, the city granted its consent to the Atlanta a
Edgewood Railroad Company to occupy its streets upon t
96 same terms and conditions as those pertaining to Atla
Street Railroad Company, thereby making the same provisi
as to fares for the Atlanta & Edgewood Street Railroad Company
existed for the benefit of the Atlanta Street Railroad Company.

11. On December 7, 1891, the City of Atlanta granted its c
sent to the Atlanta Consolidated Street Railroad Company to occu
its streets as follows:

"The right and franchise consented to and granted to said seve
street railroad companies (including Atlanta Street Railroad Co
pany) are hereby re-consented and regranted to said Atlanta C
solidated Street Railroad Company on the terms specified in the s
grants both as to privileges and obligations."

12. In the consents granted to the constituant compan
of the Atlanta Consolidated Street Railroad Company on Dece
ber 7, 1891, there was no provisions for a fixed fare other than
fare fixed for the Atlanta Street Railroad Company.

13. On August 23, 1899, the City of Atlanta granted a consent
the Atlanta Rapid Transit Company to occupy with its lines t
following streets in said city: Auburn Avenue, Ivy Street, Courtla
Street, Juniper Street, Forest Avenue, Hunter Street, Woodw
Avenue, Cherokee Avenue, Walton Street, Luckie Street, Ja

enue, Gray Street, Kennedy Street, English Avenue and Bellwood enue.

Among the terms of this consent were the following:

"This grant is made on the further condition that the charge for e for a single passenger from any point on the lines of said com- ny to any other point on the lines of said company within the y limits of Atlanta as now or hereafter defined shall not exceed five cents, except on cars that may be run after midnight and before five o'clock a. m., for which fares of single passengers as aforesaid shall not exceed ten cents."

14. Prior to February 8, 1902, the name of Atlanta Consolidated reet Railroad Company had been changed to that of Atlanta Rail- y and Power Company, and there was in existence at said time in tlanta only two street railway companies, the Atlanta Railway and ower Company, and the Atlanta Rapid Transit Company.

15. These two railroad companies, together with the Georgia ectric Light Company and the Atlanta Steam Company desired consolidate, and the consent of the city was sought to permit and thorize such consolidation. This consent of the city was obtained d it was embodied in what is known as the "Consolidation Ordi- nce" of February 8, 1902, a copy of which ordinance is hereto tached marked "Exhibit A."

16. The paragraphs hereinabove include all that can be claimed contracts or franchise ordinance existing between the city of tlanta and the Georgia Railway & Power Company. The net re- lt of these so-called franchise contracts, at the date of the Consoli- ting Ordinance, February 8, 1902, was: (1) All the railroad lines the City of Atlanta, except those of the Rapid Transit Company, d no limit as to fares or had a maximum limit of twenty cents and minimum of ten cents, as hereinabove stated. (2) The Rapid ransit Company had a maximum limit of ten cents and a minimum five cents, as above stated.

16-A. On Oct. 19, 1898, the City of Atlanta granted its consent the Atlanta Railway Company, to construct its lines of railway on rtain streets in the City of Atlanta. One of the terms of such rant is as follows: "And on condition also that said Atlanta Rail- way Company, and its successors and assigns, by accepting this grant, or operating any of the lines covered by this grant, agree upon the payment of one fare not to exceed five nts, to transport any passenger from his initial point within the mits of the City of Atlanta to his destination within the city of tlanta, as its limits now exist, or may be hereafter extended, by ntinuous passage upon any line, etc." (See 1st paragraph on page 80.)

16-B. However, by ordinance adopted March 30, 1899, the City of tlanta, amended the ordinance or franchise last above referred to s follows: Said ordinance "is amended so as to relieve the Atlanta

Railway Company from certain of the conditions annexed b original ordinance to the granting of authority and consent as said, to wit: The City of Atlanta relieves said company as lines to be constructed under said original ordinance fro right reserved by the City of Atlanta to require the granti transfers, and the regulations of fares as therein provided fo copy of said ordinance is hereto attached marked Exhibit – made a part hereof.

16-C. Petitioner avers that the property and franchise Atlanta Railway Company were conveyed and transferred Atlanta Railway and Power Company, were owned and con by it on Feby. 8th, 1902, and thereafter were conveyed and ferred by it to Georgia Railway and Electric Company.

17. As a matter of practice, all the street car lines City of A had, for some time prior to February 8, 1902, charged a fiv fare for day passengers and up to twelve o'clock midnight, a cents passage after twelve o'clock midnight, and until five o'cl the morning.

The Rapid Transit Company had for a considerable time p the month of August or September in the year 1901, sold thre for ten cents, but at the date of the Consolidating Ordi
99 and some months prior thereto, that company had c five cents for day travel, and up to twelve o'clock mid and ten cents for passage between twelve o'clock and five o Both of the street railway systems then in existence had, prior passage of the Consolidating Ordinance, granted limited trans

18. After the passage of the Consolidating Ordinance, A Railway & Power Company, Atlanta Rapid Transit Com Georgia Electric Light Company and Atlanta Steam Compan solidated under the name of Georgia Railway & Electric Com The ordinance itself was elaborate and carefully drawn, and no direct provision as to rates. The only provision relating t was a provision for transfers, wherein provision was made f transfer on payment of one full fare. No amount is specified i ordinance as to what constitutes a full fare.

19. The purpose and intent of this Consolidating Ordina amply stated in the ordinance itself.

"It being the intention hereof to allow the full and fre solidation of the companies heretofore referred to and their erties whereby the freest possible use and profit thereof may to said consolidated company and so that said company ma solidate, control and operate all of said properties as it may subject only to proper police laws and restrictions."

20. At the date of the passage of the Consolidating Ordi there was in the City Code of Atlanta (City Code of 1899, S 1351-H) an ordinance providing that no street railway co thereafter should "be permitted to collect for fares for sing

ngers from one point of the line or system of such company in the city limits aforesaid more than for one continuous trip from five a. m. to twelve o'clock midnight, five cents, nor more then, for one continuous trip 12 p. m. to 5 a. m., ten cents."

The Consolidating Ordinance repealed that provision of the city dinance in the following words:

"That the general ordinance on the subject of street railways and eir operation and control approved August 22, 1899, and contained the City Code, Section 1351-A to 1351-M, both inclusive, be and e same are, hereby repealed."

21. Your petitioner shows that unless there has been made a ntract between the City of Atlanta and your petitioner with refer- ce to fares upon its street railways by virtue of the ordinances ove set out, then there is no contract between the city and your titioner with reference to street railway fares.

22. Petitioner shows that the City of Atlanta neither now has, r has it ever had, except as set out in the charter to the Atlanta reet Railroad Company, any power granted it under the constitu- n or laws of this State to contract with your petitioner as to the res to be charged on its lines of street railway. The City of lanta, therefore, has no power to contract with petitioner with ference to fares, and if it has undertaken so to do the results thereof e void under the law.

23. The City of Atlanta passed an ordinance prior to the Code of 99, known as Section 1314 of that code, as follows: "The charges r passage on said roads shall not exceed twenty cents for any rough line, and ten cents for half lines or short distances." To this section is this foot note: "This section had reference to d lines of the Atlanta Street Railroad Company."

24. This same section was codified in the City Code of 1910, as llows:

"Sec. 2697. Charges for fare on road (this section had reference to old lines of the Atlanta Street R. R. Co.). The charge for passage on said roads shall not exceed twenty cents r any through line, and ten cents for half line or short distances."

25. In 1897 the City of Atlanta pa*dde*d the following ordinances, nown as sections 1335 and 1336 of the Code of 1899:

"Sec. 1335. From and after the first day of May, 1897, it shall unlawful for any company operating electric or other railways or upon the streets of Atlanta, or by itself or its agents, directly indirectly to charge or collect more than five cents for the trans- rtation of any person from any point on said line or lines to any her point on any line or lines owned or operated by said com- ny, whether the same be for a continuous passage on a through e or by transfer to any other line or lines owned and operated said company."

"Sec. 1336. Upon the payment of one full fare, as above provi
it shall be the duty of said railway company to transport such
senger to his destination upon any line or lines of said comp
and to furnish a transfer ticket, without additional charge wher
it is necessary for such passenger to change to the car of any o
line or lines operated by said company, in order to reach his
destination."

The City of Atlanta, in 1898, sought to enforce the above sect
of the code, sections 1336 and 1336, and the Atlanta Consolid
Street Railway Company, one of the predecessors in title and f
chise of petitioner, enjoined their enforcement upon the ground
lack of power in the city. (City of Atlanta v. Old Colony T
Company, 88 Fed. 859.) That case ended any effort on the c
part to fix fares by means of this ordinance.

102 26. In spite of the case in 88 Federal 859, these sect
were re-codified in the City Code of 1910, as sections 2
and 2622 of that Code, the City of Atlanta since the rendition
the decision in the Old Colony Trust Company case and the c
piling of the Code of 1910, has obtained from the legislature
further nor additional charter power with reference to street
way fares.

On August 22, 1899, the City of Atlanta passed the follo
ordinance with reference to street railways:

"Sec. 1351-H. No person, firm, corporation or associaation h
after obtaining authority or consent to construct or operate a
or system of street railways in the limits of the city of Atlanta
now or hereafter defined, shall be permitted to collect for fares
single passengers from one point of the line or system of such c
pany in the city limits as aforesaid, more than for one contin
trip from 5 a. m. to 12 p. m., five cents nor more than for one
tinuous trip from 12 p. m. to 5 a. m. ten cents.

This ordinance was codified in the City Code of 1899 as sec
1351-H and in the City Code of 1910 as section 2758.

28. The ordinances above quoted, known as section 1351-H
the Code of 1899, and as section 2758 in the Code of 1910, h
been repealed by section 6 of the Consolidated Ordinance as foll

"Sec. 6. Be it further ordained, that the general ordinance
the subject of street railways and their operation and control,
proved August 22, 1899, and contained in the City Code, sec
1351-A to 1351-M, both inclusive, be and the same are, hereby
pealed."

This section 6 just above repealing sections 1351-A to 1351-M
the City Code, was modified, however, by section 12 of the repeal
ordinance so that the repeal was applicable only to th
103 companies taking advantage of the Consolidating Ordina

29. Section 12 provided "that no benefit hereunder and no re-
eal of any ordinance or part thereof made hereby, shall accrue or
pply to any of said companies not included in said consolidated
ompany, but as to any company which does not come into the con-
olidation provided for hereby, the city shall and does preserve all
id ordinances and all powers and rights which the city now has
r may hereafter acquire."

30. The Consolidating Ordinance was dealing with all the street
ilway companies and all the electric companies then in Atlanta,
nd it was evidently the purpose of the city to end all the contests
etween these companies, then long outstanding, by bringing them
l under one management and control. To that end, it repealed
s to those entering the consolidation all those ordinances approved
ugust 22, 1899, including the five cent fare provision, but ex-
ressly keeping it in force as to all companies not entering into the
onsolidation.

The result was not that the five cent fare ordinance was wholly
epealed, nor, indeed, in a strict sense, repealed at all. It was re-
ealed as to the consolidating companies, now the Georgia Railway
Power Company, but it remained of force as to all other railway
nd power companies, and was included in the Code of 1899, with
mited application, and was properly incorporated into the new
ode of 1910, together with the consolidating ordinance, with the
ery same limitations.

31. Petitioner shows that it was decided in the Old Colony Trust
ompany case, supra, that the City of Atlanta had no authority to
ass the city ordinance enacted in 1897, and if the city lacked the
harter power to pass that ordinance, it also lacked the charter power
to pass the ordinance of 1899.

04 Your petitioner, therefore, alleges that there are outstand-
ing no valid ordinances fixing street railway fares in the
ity of Atlanta and that the city lacked the charter power to pass
ny such ordinance.

The ordinance of 1897, even if valid (which petitioner denies)
as repealed by the ordinance of August 22, 1899, and the ordinance
f August 22, 1899, was repealed so far as petitioner is concerned
y the Consolidating Ordinance of 1902.

32. Therefore, your petitioner alleges that there is no valid sub-
isting contract now in existence fixing fares, nor was there such
ontract in the year 1907 between the City of Atlanta and your pe-
itioner, nor any municipal ordinance fixing said fares now exist-
ng, nor was any such ordinance in existence in the year 1907.

33. The town of Edgewood was once a separate and independent
unicipality, it has since disappeared, its territory having by an act
f the legislature been added to the City of Atlanta.

34. When existent it granted to Collins Park & Belt Railroad
whose lines are now operated by the Georgia Railway & Power Co.,

by lease from Georgia Railway & Electric Company) the right
occupy the main Decatur road (one of its then streets): "Provid
that the fare shall be five cents and transfers from all parts of Edg
wood to all parts of Atlanta."

This consent was only for a single track.

35. After the Georgia Railway & Electric Company purchas
this Decatur road line from the Collins Park & Belt Railroad Co
pany, it was found desirable to put a double track on the "Ma
Decatur Road" the Town of Edgewood consented thereto as follow

"The rates of fares for the transportation of passengers betwe
any points on said line within the present limits of the to
105 of Edgewood and any point in the city of Atlanta shall n
exceed the rate of fares charged between Inman Park a
other points in the city of Atlanta."

36. This latter consent does not expressly repeal the one ju
above, but it clearly does so by necessary implication. The first pr
vides for five cents without limitation or condition. The secon
makes the fare "between Inman Park and other points in the Ci
of Atlanta" the standard so that the fare might be more or less tha
five cents. If the Railroad Commission should raise or lower th
rates in Atlanta, the fare under the conditions of this consent woul
automatically likewise rise or fall. The condition of this conse
applies only to one line in the Edgewood territory, leaving no co
ditions as to the South Decatur Line.

37. The Georgia Railway & Electric Company in and prior to 19
had two lines in the Town of Decatur, one known as the main D
catur line, bought from the Rapid Transit Company, running nort
of the Georgia Railway and the other known as the south Decatu
line, running South of the Georgia Railroad. There is no preten
that there is any contract franchise or otherwise-fixing rates as t
the South Decatur line.

38. In the original consent for the initial construction of th
main Decatur line there was no rate provisions. Thereafter th
Georgia Railway & Electric Company purchased a line, then in D
catur, from the Atlanta Railway & Power Company. The Georg
Railway and Electric Company in March, 1903, desired to discon
tinue this last line and physically removed it from the streets o
Decatur. This was at first resisted by the town, but afterwards a
agreement was made between the parties consenting to the remov
of the line upon the following basis:

"To never charge more than five cents for one fare upon its mai
Decatur line for one passenger for one trip upon its regular ca
from the terminus of said line in the city of Atlanta t
106 the terminus of same in the town of Decatur and vice versa
though a greater fare may be charged when passengers ar
transported between the hours of twelve o'clock midnight, and fi
o'clock a. m. To grant one transfer ticket upon the payment of o

full fare for the purpose of giving one continuous ride from any point within the town of Decatur upon said Rapid Transit line to any point within the city of Atlanta, on any of its lines in said city and vice versa, etc."

39. The only franchise contract claimed between East Point and this company in existence in 1907, is as follows:

"Passengers from all parts of the town of East Point shall be accorded each and every privilege and right which may be accorded citizens of Atlanta with regard to transportation."

The indefiniteness of this provision is at once apparent. It is not at all certain that it applies to the subject of fares. If so, it would seem to regulate only within the corporate limits of East Point, and not from all points within those limits to all points on the railway system beyond such limits.

40. The only franchise contract that can be claimed that existed between College Park and petitioner in 1907, was as follows:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta." There was in this franchise no provision as to transfers.

41. Other than is above set out, there was in 1907, in existence no contract franchise or otherwise between petitioner and the towns of Edgewood, Decatur, East Point and College Park, fixing
107 fares to be charged on petitioner's lines of railway, nor except the franchise ordinances above referred to, were there any ordinances in the towns of Edgewood, Decatur, East Point and College Park, seeking to fix the rates that could be charged by petitioner upon its lines of railway.

42. Your petitioner charges that neither of the towns of Edgewood, Decatur, East Point and College Park had charter power to make with your petitioner contracts fixing street railroad fares, and any contracts sought to be made by either of said towns with petitioner was null and void for lack of power on behalf of all said towns to make such contract; nor did either of said towns have charter power to pass any ordinance fixing the rates of fares that petitioner should charge upon its lines of railway.

Under the constitution and laws of this State, the power of fixing railroad fares, either adversely or by contract, is vested in the legislature, and such powers have not been granted to said municipalities by the general assembly.

43. On the 16th day of April, 1918, the Georgia Railway & Power Company filed its petition with the railroad commission of Ga., alleging inter alia:

"That said rates for the service of electric current and street car fares and gas now on file with this Honorable Commission are wholly

inadequate and insufficient to furnish sufficient income to properly care for and preserve its properties and adequately and efficiently serve the public.

"That the said rates are so low as to be inadequate and insufficient to pay the cost of the service and yield a reasonable return on the investment necessary to render the service.

"That it is directly and immediately in the interest of the
108 public locally and throughout the entire territory served by it and for the national welfare that petitioner be granted an increase in its rates in order to keep it a going concern and enable it to properly and effectively serve the public. Petitioner is ready and will disclose at the hearing all facts and give all information and details desired by the Honorable Commission."

44. To this petition, duly filed and served, there was attached a formulated table of rates for gas, electric current and street car fares which petitioner alleged was fair and reasonable and which was necessary to enable petitioner to continue in the discharge of its duties and responsibilities to the public and to preserve it as a useful public service corporation. Your petitioner prayed "the approval of this Honorable body of said table of rates so formulated in order that the same may become effective."

A copy of said petition together with the attached formulated table of rates which petitioner desired to be permitted to charge is hereto attached marked "Exhibit B."

45. After said petition had been filed with the railroad commission and properly served under its rules and regulations, the same was set for a hearing and a painstaking and exhaustive hearing before said commission was had, extending over several weeks.

46. At and during said hearing petitioner brought before the commission oral testimony covering several hundred pages of typewritten matter and introduced into the hearing all of its records and books, all of which, as petitioner contends, showed clearly that the rates and charges which the commission was asked to approve were just, fair and reasonable and necessary for the protection of the public as well as essential to the welfare of petitioner.

47. A defense was made to said petition, Exhibit B, by attor-
neys purporting to represent certain municipalities and
109 manufacturing interest, including among the municipalities the cities of Atlanta and Decatur. The cities of Atlanta and Decatur alone attacked the jurisdiction of the commission to fix the sought for street railway fares.

48. These cities not only deny that the street railway fares which the commission was asked to approve were just and reasonable, but alleged the existence of certain contracts between petitioner and the cities of Atlanta, Edgewood, Decatur, East Point and College Park, which brought petitioner within the proviso of the act of 1907, thereby taking from the commission the jurisdiction to fix rates in said cities in the counties of Fulton and De Kalb.

49. To sustain the contention that the street railway fares and charges which the commission was asked to approve were not just and fair, defendants depended upon the testimony of Mr. Joel Hurt, dealing with what he declared to be the unfair capitalization of the Georgia Railway & Power Company, and upon the testimony, oral and written, introduced by petitioner.

50. On the question as to the jurisdiction of the commission to approve the street car fares and charges sought by petitioner upon its lines of street railway in the cities of Atlanta, Edgewood, Decatur, East Point and College Park and on the roads and highways of the counties of Fulton and DeKalb, defendants introduced before the commission the following testimony:

(1) The charter of the Atlanta Street Railroad Company, dated February 23, 1866, appearing in Georgia Laws, 1865-6, page 201, copy of which is hereto attached, marked "Exhibit E."

(2) Amended charter of the Atlanta Street Railroad Company, dated December 26th, 1890, appearing in Georgia Laws for the
110 years 1890-91, page 283, copy of which is hereto attached and marked "Ex. F."

(3) Charter of the Atlanta Consolidated Street Railroad dated May 16, 1891, which is hereto attached and marked Exhibit "G".

(4) Charter of the Georgia Railway & Electric Company dated Jany. 28, 1902, a copy of which is hereto attached marked Exhibit "H".

(5) Deed from the Atlanta Street Railroad Company to the Consolidated Street Railroad Company, recorded in Book C-4, page 669, of Fulton county records, copy of which is hereto attached marked Exhibit "I".

(6) Deed of Atlanta Railway & Power Company to the Georgia Railway & Electric Company, recorded in Deed Book 160, page 182, of Fulton county records, copy of which is hereto attached marked "Exhibit J."

(7) Resolution of the city council of Atlanta passed and adopted January 1, 1869, copy of which is hereto attached marked "Exhibit K."

(8) Ordinance of City of Atlanta granting the right to merge certain lines of railway in the City of Atlanta, dated December 7, 1891, copy of which is hereto attached marked "Exhibit L."

(9) An ordinance of the City of Atlanta allowing the Atlanta Railway & Power Company and certain others to transfer property and franchises to the Georgia Railway & Electric Company, adopted January 27, 1902, copy of which has already been attached marked "Ex. A."

(10) An ordinance of the City of Atlanta dated March 11, 1912, copy of which is attached marked "Exhibit M."

51. Petition avers that the above sub-paragraphs numbers 1 to 1[illegible] inclusive, together with the franchise ordinances in the nature of contracts and the ordinances seeking to fix the fares charged, heretofore in this petition set out, was all the evidence before the commission and includes all the evidence that can be produced before
111 the commission dealing with their jurisdiction to fix and approve the street railroad fares sought by your petitioner; and your peitioner alleges that under said evidence the commission has jurisdiction and authority to consider the petition of the Georgia Railway & Power Company and to grant the increased street railroad fares sought, provided they find, as they did, that the same are just and reasonable.

52. Petitioner shows that after hearing the evidence and argument on said petition, the railroad commission finally on the 14th day of August, 1918, passed final judgment thereon, in which various changes were made in the charges, rates and fares of petitioner as to gas, light and power, resulting in the main in an increase of rates, charges and fares over said rates, charges and fares in force prior to the filing of the petition above referred to, but declined to grant the increase of street railway fares sought for the sole reason that under the proviso of the act of 1907, they did not have jurisdiction to fix street railroad fares in the cities of Atlanta, Edgewood, Decatur, East Point and College Park, and while the commission did not grant the prayer of petitioner as to street railroad fares because of lack of jurisdiction as in just stated, the commission did find that as a matter of fact the street railroad fares in the cities aforesaid were too low and that in fairness and justice they ought to be increased to six cents instead of five, and that if the cities concerned would change their ordinances they would at once act and allow a six cent fare instead of five cents. A copy of the official order of the commission is hereto attached marked "Exhibit N."

53. Said commission erred in declining to take jurisdiction in the matter of approving and fixing just and reasonable street railroad fares as prayed for by your petitioner. (1) Because there
112 are no contracts, valid or otherwise, between the city of Atlanta and your petitioner, fixing the street railroad fares, nor was there in existence in 1907 an ordinance, valid or otherwise, passed by the city of Atlanta fixing street railroad fares, and if there existed at said time any such contracts or ordinances, the same were invalid (*a*) because the city of Atlanta lacks the charter power to make any such contracts or ordinances and (*b*) because if the city of Atlanta had charter power to make said contracts and enact said ordinances they would be void because they violate Article 4, Section 2, paragraph 1, of the constitution of the State of Georgia, conferring upon the general assembly alone the power of regulating passenger tariffs, preventing unjust discrimination, and fixing reasonable and just rates. (2) The claimed contracts between petitioner and the towns of Edgewood and East Point are not valid contracts because (*a*) the said towns lack the charter power to make such contracts

nd (*b*) because if the towns of Edgewood and East Point had harter power to make said contracts they would be void because in olation of Article 4, Section 2, Paragraph 1, of the constitution of he State of Georgia, which restricts the power of regulating pas-nger tariffs and preventing discrimination to the general assembly f this State, and (*c*) because under the words of the claimed con-racts the fares in the two said towns are not fixed, but are to vary ith the rates in the city of Atlanta, and the commissioners in fix-ng rates in the city of Atlanta would lawfully automatically fix rates n the two said towns. (3) The claimed contracts in the towns of Decatur and College Park are invalid (*a*) because each of said towns acks the charter power to make such contracts, and (*b*) because if aid towns claimed the charter power to make said contracts it is in iolation of articles 4, section 2, paragraph 1, of the constitution of this State, which restricts to the general assembly the power
13 to make rates and prevent discrimination on railroads. (4) Even if they are valid contracts as to one or more of the municipalities upon whose streets petitioner has lines, the existence f such valid contracts would not prevent the railroad commission rom exercising its jurisdiction to fix street railroad fares of petitioner n all cases other than cases covered by said valid contracts. It is within the jurisdiction and the duty of the commission to fix just nd reasonable street railroad fares except in cases covered by valid existing laws and ordinances passed and enacted prior to 1907. (5) If there are in the cities whose streets are occupied by petitioner, valid existing contracts, the act of the commissioners in fixing and approving just and reasonable rates would not, under the laws be n impairment of such contracts. Under the constitution of this State, article 4, section 2, paragraph 1, the general assembly alone an either by contract or laws, fix fares for street railway companies, nd if cities having street railway corporations can contract with eference to fares, the above part of the constitution enters into and ecomes a part of such contracts, and such contracts, whether the egislature acts directly or through commissioners, are not impaired, ut the provisions of such contracts are, in fact, thereby carried out. (6) The proviso in the act of 1907, is void because in violation of he constitution of the State of Georgia, set out in the Civil Code in ections 6391 and 6358, in that it does not have uniform operation hroughout the State, and is not impartial and complete as required y said constitution.

54. Your petitioner shows that the refusal of the railroad com-nission to take jurisdiction of the petition of the Georgia Railway t Power Company, seeking to have the commission to approve the street railway rates and fares attached to its petition, or to fix
14 other just and reasonable rates to be charged by your peti-tioner on its street railways, leaves petitioner remediless, un-ess this Honorable court will grant the right of mandamus, directing he said railroad commission to take jurisdiction of the Georgia Railway & Power Company as to the matter of approving the said ates sought by it in lieu thereof in fixing other just rates.

55. The suggestion of the commission that the city council of the cities claiming to have contracts modify the same and that upon such modification the commission would then act and approve the six cent fare sought by petitioner has been rejected by the city council of the city of Atlanta, as will be seen by a report of a committee to the body, and its resolution which is hereto the court shows, marked Exhibit "P." Upon information and belief petitioner alleges that the other city councils will reject the suggestion of the commission.

Wherefore, your petitioner names the railroad commission of Ga and C. M. Candler, George Hillyer, Paul B. Trammell, John T. Boi feuillet and J. A. Perry as defendants hereto, and respectfully pray

(1) That this court issue mandamus nisi, directed to the said commissioners, C. M. Candler, George Hillyer, Paul B. Trammell, John T. Boifeuillet and J. A. Perry, requiring them to show cause at the time and place to be designated by the court, not less than ten days nor more than thirty days, why a mandamus should not be issued against them and each of them, requiring them to take jurisdiction of the petition of Georgia Railway & Power Company, a copy of which is hereto attached, marked "Exhibit B" and to consider and adjudge the same, and to approve or disapprove the street car fares therein sought, or in lieu thereof to fix such other fares and
115 rates as may seem just and reasonable to said railroad commissioners, and in the exercise of its jurisdiction in said cause to pass final judgment upon said petition in accordance with what may be equitable and just in the premises.

(2) That on the hearing of the mandamus that it be made absolute and defendants be required to take jurisdiction of the petition of Georgia Railway & Power Company a copy of which is hereto attached, marked "Exhibit B" and to consider and adjudge the same and to approve or disapprove the street car fares therein sought, or in lieu thereof to fix such other fares and rates as may seem just and reasonable to said railroad commissioners and in the exercise of its jurisdiction to pass final judgment upon said petition as to street railroad fares, in accordance with what may be equitable and just in the premises.

(3) That process may issue directed to said defendants requiring them to be and appear at the time and place designated by the court to answer this complaint, and abide by the full orders of the court. This 22 day of August, 1919.

KING AND SPALDING,
C. T., L. C. &
J. L. HOPKINS,
BREWSTER, HOWELL & HEYMAN,
COLQUITT & CONYERS,
ROSSER, SLATON, PHILLIPS AND
HOPKINS,
Pl'ff's Attys.

TATE OF GEORGIA,
County of Fulton:

Before the undersigned personally appeared Preston S. Arkwright, ho upon oath says that he is the president of the Georgia Railway & ower Company, the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof; and
16 that the facts therein are just and true as they stand stated.
PRESTON S. ARKWRIGHT.

Sworn to and subscribed before me, this 23 day of August, 1918.
[SEAL.]
L. D. HINTON,
N. P. State at Large, Georgia.

(*Order.*)

The petition of the plaintiff in the above entitled cause has been ead and considered, and the same is hereby sanctioned and ordered led, and defendants served, and it is further ordered that the de- endants named, to wit, C. M. Candler, George Hillyer, Paul B. Trammell, John T. Boifeuillet and J. A. Perry, be and appear before ne at the court house in the city of Atlanta, Ga., on the 7th day of eptember, 1918, at nine and one-half o'clock a. m., or as soon there- fter as can be heard, then and there to show cause why mandamus bsolute should not be issued against them as prayed for in the peti- ion.

Dated and signed this 23d day of August, 1918.
GEO. L. BELL,
Judge S. C A. C.

EXHIBIT "A."

Ordinance Allowing the Atlanta Railway and Power Company, Atlanta Rapid Transit Company, Georgia Electric Light Company, and Atlanta Steam Company to Transfer Property and Franchises to Georgia Railway and Electric Company and Franchise Granted Georgia Railway and Electric Company.

Consolidating Ordinance.

By Councilman Howell:

An Ordinance to Provide for the Consolidation of the Atlanta Rail- way and Power Company, Atlanta Rapid Transit Company, Georgia Electric Light Company, and Atlanta Steam Com-
17 pany, and for Other Purposes.

Section 1. The Mayor and General Council of the City of Atlanta lo hereby ordain. That the authority, right, permission and consent re hereby granted to the Atlanta Railway and Power Company, tlanta Rapid Transit Company, Georgia Electric Light Company nd Atlanta Steam Company, and the successors and assigns of each,

to consolidate, unite and merge the said companies, or any of them and the properties, business, stations, lines, tracks, pipes, cables, wires, conduits, rights, privileges and franchises, or any part thereof according to such plan at such time or times, and upon such terms as the companies entering into such consolidation may desire or deem to their best interest. In order to fully and effectually accomplish such consolidation, authority, power and consent are hereby granted to each of said companies, its successors and assigns, to sell, dispose of, lease, assign, set over, transfer and convey all or any part of its business, property, stations, lines, poles, pipes, conduits, tracks, rights, privileges and franchises, and the said rights, privileges and franchises so assigned, set over, transferred or conveyed are hereby regranted and reconsented by the city of Atlanta, to the persons or company to which the same are assigned, transferred or conveyed, their and its heirs, successors and assigns, upon the same terms and conditions contained in said grants, except as the same may be herein modified.

Sec. 2. Be it further ordained, That the said consolidated company, its successors and assigns, shall have, and it and they are hereby granted the right, power, consent and permission to hold, enjoy, use, equip and operate the street railway lines, tracks, rights and privileges, so acquired upon the terms and conditions as to each of said lines contained in the grant under which the said line was constructed, the terms and conditions of each remaining the same as to the line constructed under it, except as such terms and conditions may be herein modified.

118

Sec. 3. Be it further ordained, That the said consolidated company, its successors and assigns, shall have, and it and they are hereby granted the right, power, consent and permission to hold, enjoy, use, equip and operate the electric light, heat and power conduits, ducts, wires, conductors, cables, insulators, manholes, service boxes, services, poles appliances and connections, and the rights and privileges of the constituent companies so acquired by the consolidating company, upon the terms and conditions contained in the grants to the Georgia Electric Light Company, approved December 23, 1899, and those adopted April 6, 1892, and December 3, 1895, and all the terms and conditions contained in the electric light franchise granted to the Atlanta Railway & Power Company approved April 22, 1901, different from or not contained in the said grants to the Georgia Electric Light Company, be, and the same are hereby repealed. And right and permission are hereby granted to said consolidated company, its successors and assigns, to open the streets, avenues, alleys and public places, or such of them as it or they may from time to time deem necessary or proper within the close or inner district of the fire limits of the city of Atlanta, and to lay, maintain and use therein conduits, ducts, wires, conductors, cables, insulators, manholes, service boxes, services, and all necessary appliances and connections, and to use the streets, alleys and public places as from time to time it may be deemed proper or necessary without the present inner fire limits for the erection and maintenance

poles and the stringing of wires, cables, insulators, and all necessary appliances and connections for the business and purpose of conveying, using, conducting, supplying and distributing electricity for light, heat or power, for public or private use, on the terms and conditions contained in said grants hereinbefore ferred to as having been heretofore made to the Georgia Electric ght Company. And to re-enter upon such streets, alleys, avenues d public places from time to time as may be necessary for the exnsion, operation, repair and removal of the same, or any portion ereof.

Sec. 4. Be it further ordained, That the Atlanta Railway and wer Company, its successors and assigns, are hereby relieved and leased from completing the works, structures and conduits required the ordinance approved April 22, 1901, granting it an electric ht franchise and of liability under said ordinance, is hereby canlled, and the principal and surety thereon released and discharged om all liability.

Sec. 5. Be it further ordained, That the consolidated company, its ccessors and assigns, shall have, and it and they are hereby granted e right, power, consent and permission to hold, enjoy, use equip, aintain and operate the steam pipes, branches, cut offs, manholes, nnections and appliances and the rights and privileges connected th the steam business and property so acquired, upon the same rms and conditions contained in the grant made to E. Woodruff d others, their successors and assigns, approved Feby. 26, 1900, cept the provisions requiring a payment to the city of a percentage portion of the gross receipts of such business, which provision is reby repealed.

Sec. 6. Be it further ordained, That the general ordinance, on the bject of street railways and their operation and control, approved ugust 22, 1899, and contained in the City Code, Section 1351-*a* to 1351-*m*, both inclusive be and the same are, hereby repealed.

It is also ordained and agreed that said consolidated company, its successors and assigns, shall be allowed to haul and convey eight and property upon and over its railways and lines in the city Atlanta subject to such reasonable rules and regulations as may om time to time be adopted by the Mayor and General Council.

Sec. 7. Be it further ordained, That any and all provisions conined in any general ordinance of the city or in any section of the y code, or in any of the grants or franchises heretofore made to now owned by the Atlanta Railway & Power Company, the Atnta Rapid Transit Company, the Georgia Electric Light Company the Atlanta Steam Company, preventing or restricting a sale, ansfer, disposition or assignment of any part of their property or anchise, or providing for any payment upon gross receipts, or forbidding, restricting, limiting or placing penalties upon consolidaon, merger, or sale of or by any of said companies, be, and the same e, hereby repealed.

Sec. 8. The City of Atlanta hereby reserves the right to conde
such portions of the lines of the street railways now held, owned
operated by the Atlanta Rapid Transit Company, whether then
and owned by the Atlanta Rapid Transit Company, its succes
or assigns, or merged into the consolidated company, not exceed
five blocks at any one place, as may be necessary, in the judgm
of the Mayor and General Council, for allowing other street
companies to enter the central portion of the city upon payment
just compensation to the railway company whose tracks are so
demned, whether held by the Rapid Transit Company or the
solidated company, its successors or assigns.

The City of Atlanta hereby further reserves the right to conde
such portions of the lines of street railway now held, ow
121 and operated by the Atlanta Railway and Power Compa
whether then held and owned by the Atlanta Railway
Power Company, its successors or assigns, or merged into the cons
dated company, not exceeding five blocks, as may be necessary
the allowing of other street car companies to enter the central
tion of the city, upon payment of just compensation to said
pany, its successors and assigns.

The city further reserves the right to allow other railway compa
to pass over Whitehall Street viaduct and the tracks constructed
said street and viaduct by the city, and in the event said city
permit any other company to use said viaduct and tracks ther
the same shall be upon the condition that the company so using
be required to pay at least an equal amount to that required to
paid by the Collins Park and Belt Railroad Company or
equivalent of said sum in rental to the City of Atlanta or 5
centum per annum on fifty thousand dollars, said sums collected
the use of said viaduct to be paid to the City of Atlanta for its

The city further reserves the right as against the Atlanta Ra
Transit Company to allow other railway companies to pass over
use whatever rights, powers, and tracks the Atlanta Rapid Tra
Company has on Peachtree Street from Auburn Avenue south,
Whitehall Street from Alabama Street south, to Mitchell Street,
use and purpose to be used by other such companies in order
reach Whitehall street viaduct, such permission, however to pres
the said Atlanta Rapid Transit Company, its successors and assi
the use of said viaduct and streets, as and for the period hereto
granted, so long as it complies with terms of grants held by th
and also to preserve said consolidated company the use of
122 viaduct granted and the rights to said streets hereto
granted to the Atlanta Railway & Power Company; such
however, not to be exclusive. In the event said city shall permit
other company to use the rights, powers and tracks of the Atla
Rapid Transit Company, the same shall be upon the condition t
the company so using shall pay a proper sum for the use ther
the amount to be fixed by the Mayor and General Council. T
sum to be paid to the Atlanta Rapid Transit Company, its succes
and assigns, for its use and their use.

The reservation of the right to allow other companies to use

ghts, powers and tracks of the Atlanta Rapid Transit Company on achtree Street from Auburn Avenue south, and on Whitehall reet from Alabama Street south, to Mitchell Street, is without ejudice to the rights and interest which the Atlanta Railway & wer Company has in said tracks, whether such rights and interests e then held by the Atlanta Railway and Power Company, its ccessors or assigns or merged into the consolidated company, but to such tracks the rights of each of said companies now owning having an interest therein are to stand and be treated as they now e in the separate companies just as if they had not been con-idated, whether such rights are then held by said separate com-nies, or their successors or assigns or merged in the consolidated mpany.

It is intended hereby that the rights of condemnation herein re-rved shall not be in addition to such rights as have been heretofore served in the separate franchise, but in lieu thereof.

Sec. 9. Be it further ordained, That said consolidated company all have the right to operate its entire system and all of the cars across the Whitehall Street viaduct as a part of its system 23 without payment of any sum, should such consolidated company acquire the tracks and privileges of the Atlanta Rapid ransit Company, the sum of $50,000 heretofore paid by the Atlanta apid Transit Company for the privilege of operating cars across id viaduct being accepted as full payment for such privileges to id consolidated company, nor shall any additional sum be required be paid by said consolidated company for the privilege of operat-g upon or across any other bridge or viaduct in the city now built, her than the sum now being paid by the constituent company on ch bridge, the payment now being required of the constituent mpany being in full for the privilege to the consolidated company.

Sec. 10. Be it further ordained. That said consolidated com-ny, its successors and assigns, are hereby granted the right and per-ission to physically connect, merge and consolidate the said prop-rties which it may acquire, wherever it desires, and to construct and y such double tracks, curves, switches, connections, wires, tracks, c., as it may from time to time deem proper for this purpose, or r the purpose of rendering efficient service, and to straighten out e kinks in its tracks and lines, it being the intention hereof to allow e full and complete consolidation of the companies heretofore ferred to and their properties whereby the freest possible use and rofit thereof may result to said consolidated company and so that id company may consolidate, control and operate all of said prop-rties as it may desire, subject only to proper police laws and re-rictions.

Sec. 11. Be it further ordained. That the rights, privileges and rants herein contained are made for the consideration and upon e terms and condition- following, to wit:

124 (*a*) Said consolidated company shall within thirty d
following the fact of such consolidation pay into the trea
of the city of Atlanta the sum of $50,000.

(*b*) Said consolidated company, its successors, and assigns, sh
also be bound to pay on or before the first day of February of e
year, beginning with the year 1903, into the treasury of the c
of Atanta, the following percentages upon the gross amounts
ceived by said company, its successors and assigns, from all
fares and tolls for passengers and property, the sale or supply
electric current for light, heat and power, and the sale or supply
steam heat, whether such receipts be earned within or without
limits of the city of Atlanta, to wit: for the first three years,
ginning with 1902, one per cent (1 per cent.) per annum of s
receipts; for the following twenty years, beginning with the y
1905, 2 per cent. per annum of said receipts, and thereafter 3
cent. per annum of said receipts.

(*c*) The Mayor and General Council shall appoint or provide
a committee or board to make examination of the books and rec
of said company to ascertain the amount of its gross receipts, a
make report thereof to the general council prior to February 1st
each year, and said company shall also on or before the first day
February file a statement of said gross receipts sworn to by an of
of the company. Said statement and report shall cover the calen
year; that is from January 1st to December 31st, of the year pre
ing each February at which said reports and statements are ma

(*d*) The payment of percentage of gross receipts above provi
for shall be in lieu of specific, occupation, license, excise spe
franchise taxes not included in ad valorem taxes or char
125 by the city of Atlanta, and in full of all money demands
charges whatever, except ad valorem taxes, paving charges
now provided by law, and bridge rentals and whatever shall be
any time required or enacted on any of said accounts, or any acco
other than ad valorem taxes, paving charges and bridge rentals, sh
operate to reduce to that extent the amounts due from the perce
ages above provided for.

(*e*) The said consolidated company shall, for the purpose of g
ing one continuous ride inside the city of Atlanta from a point
one of its lines to a point on another of its lines, which, however
does not carry the passenger on a parallel line or in the same gene
direction from which he came, grant one transfer ticket on the p
ment of one full fare, provided such transfer is requested at the ti
of payment of the fare, provided the company shall have the ri
to make such reasonable rules and regulations as to limit the ti
in which they are used, so that they will be available only for
first connecting car, and as to any other matters necessary or pro
to protect said company from imposition or abuse or assignment
such transfers, and to avoid liability in damages from mistakes
employes in regard to said transfers.

Sec. 12. Be it further ordained, That the terms of this ordinance
all be accepted by said consolidated company upon its formation
as to bind it to the terms thereof, and the provisions of this
dinance shall not be effective until so accepted. It is further under-
ood and intended hereby that whenever the name "Consolidated
ompany" is used herein it means that company into which the
ompanies named above, or any two or more of them are consoli-
ated, merged, or united, whether one of the existing companies of
new company: provided, that no benefit hereunder and no repeal
of any ordinance or part thereof made, hereby shall accrue
26 or apply to any of said companies not included in said con-
solidated company, but as to any company which does not
me into the consolidation provided for hereby, the city shall and
es preserve all said ordinances and all powers and rights which the
ty now has or may hereafter acquire.

Sec. 13. Be it further ordained, That should the City of Atlanta,
er at any time construct, lease, purchase, acquire, own, hold, use
operate an electric lighting or power plant, then the percentage
reinbefore provided to be paid by said consolidated company shall
ate as to the gross receipts derived from the business of supplying
ectric current and shall forever after be uncollectible, and the city
Atlanta shall from then on cease to be entitled to any percentage
other sums whatever, on account of the business of supplying
ectric current of said consolidated company, its successors and
signs.

Sec. 14. Be it further ordained, That all laws, ordinances, resolu-
ons, or parts thereof, as well as provisions in other grants and
anchises, in conflict herewith be, and the same are, hereby repealed.

Adopted January 27, 1902.
Concurred in January 29, 1902.
Approved February 8, 1902.

L. MIMS,
Mayor.

Amending Ordinance.

By Council- Howell:

Sec. 1. Be it ordained by the Mayor and General Council. That
e ordinance approved February 8, 1902, entitled "An Ordinance
provide for the consolidation of the Atlanta Railway and Power
Company, Atlanta Rapid Transit Company, Georgia Electric
27 Light Company and Atlanta Steam Company, and for other
purposes" be and the same is hereby amended as follows:

1st. By striking in lines 6, 7 and 8 of section 2, of said ordinance,
e following words: "Was constructed the terms and conditions of
ch remaining the same as to the lines constructed under it," and
sert in lieu thereof the following words: "is now held and
perated."

2nd. By inserting in section 10 of said ordinance between
words "Lines" and "It" in the eighth line of said section, the follo
ing words: "The right to construct and lay tracks granted here
is intended to be confined to the streets within the present system
the company, and is not intended to grant the right to constru
new lines or build tracks upon streets or sections of streets not n
occupied by street railways, without the further consent of the Ma
and General Council."

Sec. 2. Be it further ordained. That the said ordinance abo
referred to, as amended as above set out, be, and the same is, here
re-enacted.

Adopted February 8, 1902.
Concurred in February 8, 1902.
Approved February 8, 1902.

L. MIMS,
Mayor.

Acceptance of Ordinance by Georgia Railway and Electric Compa

To the Mayor and General Council of the City of Atlanta:

In accordance with the provisions of section 12 of the ordinan
to provide for the consolidation of the Atlanta Railway and Pow
Company, Georgia Electric Light Company, Atlanta Rapid Tran
Company and Atlanta Steam Company, and for other p
128 poses, adopted by your Honorable body and approved by
mayor on February 8, 1902, Georgia Railway and Elect
Company, a corporation duly organized under the laws of the St
of Georgia, being the consolidated company referred to in said o
nance, into which two or more of the said constituent compan
have been consolidated in accordance with the terms of said o
nance, and into which it is contemplated by the officers of said co
pany that all of said constituent companies named in said ordina
will be eventually merged, does hereby accept the terms of the s
ordinance above referred to and also the terms of the amendment
said ordinance adopted by your Honorable body on February
1902, and also approved by the mayor on February 8, 1902; and
said Georgia Railway and Electric Company does hereby agree a
bind itself to the terms and provisions of the said ordinance
amended by the said amending ordinance above referred to.

Enclosed herewith is a certified check to the order of the City
Atlanta for the sum of fifty thousand ($50,000) dollars, being
sum required to be paid by this company to the city by sub-divis
A of Section 11 of the ordinance above referred to, as part of the
sideration by this company to the City of Atlanta, for the rig
consents, and privileges conferred upon this company, its succes
and assigns, by said ordinance.

Attached hereto are certified copies of the resolution of the sto
holders and of the resolution of the board of directors of this co
pany authorizing this acceptance to be made.

Witness the corporate name and corporate seal of the Georgia Railway and Electric Company hereunto affixed by P. S. Arkwright its president, and S. J. Bradley, secretary, hereunto duly authorized, this February 20, 1902.

GEORGIA RAILWAY AND ELECTRIC COMPANY,
By P. S. ARKWRIGHT,
President.

S. J. BRADLEY,
Secretary.

129 EXHIBIT "B."

To the Honorable Railroad Commission of the State of Georgia:

The petition of the Georgia Railway & Power Company respectfully shows:

1. That it is a corporation under the laws of the State of Ga., and that its charter and history of its organization, and the amount of the issue of its securities are all matters of record in the office of this Honorable Commission, and are here referred to for the purpose of this petition.

2. That petitioner is conducting the business of street car service to the public in the cities of Atlanta, Kirkwood, Decatur, East Point, College Park and Hapeville, also in the City of Gainesville, Ga., also extensive suburban street railway business in the counties of Fulton, De Kalb and Hall.

3. That it is also engaged in serving the public with electric current for light, heat and power in this same territory, and generally throughout the northern part of the State of Ga., embracing many other cities, towns, suburban territory, and serving a great number of industrial and commercial plants and private citizens.

4. That it is engaged in serving the public in the city of Decatur with gas, and that it owns the entire capital stock of the Atlanta Gas Light Company, which serves the cities of Atlanta, East Point, College Park and contiguous territory with illuminating and fuel gas.

5. That its electric current is generated largely by water power, and also to a considerable extent by steam plants, and that it has a distributing system and tower line which reaches from its plant at Tallulah Falls, and from the cities of Elberton and Hartwell, on the east to the cities of Newnan, Carrollton and Cedartown on the west, Rome and Dalton on the north; Social Circle and Monroe on the south.

130 6. That in said territory it serves directly itself or by furnishing municipalities and local companies, the electric current for forty-six cities and towns, and also serve a large number

of mills, manuacturing plants and industries operating therein, a which use same both for light and power.

7. That embraced in said service is the furnishing of electric c rent for the pumping of water to various of the municipalities in a territory, and also for furnishing light and power to various publ institutions, hospitals, United States army camps, cantonments, a to almost all of the public institutions located therein.

8. That it is furnishing electric current for power and light to large number of cotton mills and other industrial plants of ma and various kinds, which are engaged largely, and some of the e clusively, in furnishing materials to the National Government f the purpose of carrying on successfully the conduct of the war.

9. That your petitioner is confronted by a grave emergency ar ing out of the general conditions produced by the war, and whi are affecting in a large measure the entire country, and becau thereof it is imperatively necessary that it have prompt and effect relief in order to enable it to continue its service of the public a the discharge of the its duties generally under its charter a franchise.

10. That these conditions produced by the war have brou about an enormous increase in the cost of everything that goes produce the service that petitioner is rendering the public, t wages of its employes have been largely increased since 1916, a that as late as the first of April, 1918, a further increase was ma and petitioners can clearly see that it will be necessary to m other and additional increases in order to retain a sufficie
131 force to operate its properties, and even with these increa it is exceedingly difficult to secure the employees necess for operation. That the price of material of all kinds has t mendously increased, and the tendency still is to further increa so that for every article, it has to purchase it is paying war pri ranging from fifty to four hundred per cent above the pre-w prices.

11. That taxes have largely increased, and the rates of inter on all moneys borrowed have largely increased.

12. That the entire output of petitioner's electric power is tak up and it cannot now enter into a contract to furnish any new terprises or industries, or to supply any amount of current ot than that already contracted until further development of its wa power takes place.

13. That in order to meet this situation and to have the co pany in position to supply the territory with additional electric c rent to take care of its growth and development, and to meet t exigencies of the war, petitioner, early in the year 1917, perfec arrangements for the further development of its water powers in t territory around Tallulah Falls, and to this end perfected its fina cial arrangements and let the contracts and entered upon the s

velopment. That this plan embraced the expenditure of about
ve million ($5,000,000.00) dollars, as shown by the records of
our Honorable Commission, and of this sum said plan involved
e furnissing of one million and five hundred thousand ($1,500,-
00.00) dollars by your petitioner from its earning- during the
eriod of construction, that at the time of said contract this was a
asonable arrangement for your petitioner to make and it has
od reason to contract for the furnishing of such sum from its
income, but that shortly thereafter war condtiions developed
32 which render it impossible for petitioner to furnish the same
from its receipts and revenues as now allowed to be charged
it on account of the large increases in cost as aforesaid.

14. That the said development, as shown by the records of your
onorable Commission, would very largely increase the capacity
petitioner to serve the public throughout said territory, and by
eans of such service to further the aims and purposes of the nation
carrying on the war, and it is very desirable from every view-
int that it should be allowed to make the same as being in the
terest of the public. That it will be impossible for petitioner to
ake the said improvements and the same will have to be stopped
nless the emergency that has arisen is relieved by an increase in
income; that it has contracts for the machinery placed, as to some
which it has been forced to postpone the delivery on account of
is emergency, thereby deferring the completion of said work for
least a year beyond the date originally contemplated.

15. That petitioner's rates are on file with this Honorable Com-
ission, and the history thereof is disclosed by its records; that
ere has never been an increase of rates in any petitioner's rates for
ectric lighting, for street car and suburban fares, or gas service;
at all changes have been decreases.

16. That it is now required to grant transfers on all fares paid
its street car and suburban lines.

17. That said rates for the service of electric current and street
r fares and gas not on file with this Honorable Commission are
holly inadequate and insufficient to furnish sufficient incomes to
operly care for and preserve its properties and adequately and effi-
ntly serve the public.

18. That the rates are so low as to be inadequate and insufficient
to pay the costs of the service and yield a reasonable return
33 on the investment necessary to render the said service.

19. That petitioner has never paid any dividend on either its
mmon or second preferred stock; that it is in arrears on cumula-
e dividends due on its first preferred stock to the extent of seven-
n per cent and petitioner respectfully submits that it is entitled
charge sufficient rates and fares to enable it to pay a fair return
on its investment.

20. That a sound administration of petitioner's properties r
quires that a depreciation reserve should be set aside sufficient
fully replace the properties and maintain them and off-set all los
occurring from wear and tear, obsolescence and supercession an
other forms of depreciation; that its incomes are insufficient to e
able it to pay the necessary expenses of operation, interest charg
and taxes and leave sufficient sum to cover this depreciation mu
less pay any return upon the investment, or to its stockholders.

21. That it is directly and immediately in the interest of th
public locally, and throughout the entire territory served by it, an
to the national welfare, that petitioner be granted an increase in i
rates in order to keep it a going concern and enable it to proper
and effectively serve the public, and that petitioner is ready, an
will disclose at the hearing, all facts, and give all information an
details desired by the Honorable Commission.

22. The conditions confronting your petitioner are gener
throughout the United States and affect substantially all business an
industries Privately controlled business and individuals have m
increased costs by increases in the prices of their products and se
ices. It is essential that the prices charged by public utili
134 for their services must likewise be increased to meet the i
creased costs of material and labor. This has been recognize
in many of the cities of the United States and by numbers of th
State Public Utility Commissions and the local regulatory bodi
In many of the cities of the United States the rates for gas, electr
service and street railway fares have already been increased, an
applications are pending for increases in other cases. From the mo
complete information which your petitioner has been able to gathe
there have recently been granted increases in four hundred an
thirty (430) cases.

Within the past few months the critical situation confronti
public utilities in the United States, brought on by abnormal w
time conditions, was presented to the authorities in Washingto
After a thorough investigation of the matter, the President of th
United States, the Secretary of the Treasury, and the Comptrol
of the Currency have all publicly expressed their concern as to th
situation, and have urged in the interest of the national program f
carrying on the war, that the State and local authorities take su
steps as may be necessary to assist the utilities in preserving the
credit and their services. Something more than the preservation
the utilities is at stake. The service which in ordinary times wo
of local convenience have become in this period of stress a nationa
necessity, and if the services of the public utilities throughout th
country should stop, the whole war program would instantly co
lapse. It follows that in so far as the condition of the public utiliti
is impaired the war program of the United States is proportionate
delayed and interfered with. What applies to the country as a
whole in considering the public utilities as a whole applies likewi

to the services rendered by your petitioner in the territory
135 served by it in the city of Atlanta and the northern part of the State of Ga. As stated by the President of the United States "It is essential that these utilities should be maintained at their maximum efficiency and that everything reasonably possible should be done with that end in view."

23. Under the unusual war conditions which have prevailed for more than a year, the directors in charge of the property of your petitioner have earnestly, patiently and persistently endeavored to manage its affairs so as to enable your petitioner to furnish usual facilities at existing rates.

They realize that they can no longer effectively discharge the obligations of the company, either to its owners or to the public without a substantial decrease in the cost of labor and material, or a corresponding increase in the price for which its service may be sold.

Neither your Honorable Board nor your petitioner's board of directors can contol the price of either material or labor, and the advanced cost of both these essential commodities makes the continued conduct of your petitioner's business, as a going concern furnishing public service for reasonable compensation, impossible under the present scale of rates.

Your petitioner's directors have, therefore, formulated the table of rates attached to this petition as the only recourse that will enable the continued discharge of their responsibility to the public and to your petitioner as a public service corporation.

And your petitioner prays the approval of this Honorable Commission to said table of rates so formulated in order that the same may become effective.

Respectfully submitted,

GEORGIA RAILWAY AND POWER COMPANY,

By —— ——,
President.

Atlanta, Georgia, April 15, 1918.

136 Georgia Railway & Power Company.

Rates Within the City Limits of Atlanta, Georgia.

In connection with all electric light, power and gas rates:

The customer himself to supply at his own cost the original installation of electric lamps and all renewals.

All gratuitous service to be dispensed with.

Georgia Railway & Power Company.

Lighting Rates Within the City Limits of Atlanta, Georgia, on Monthly Basis.

Residence Lighting Rates.

10¢ per K. W. H. for the first 150 K. W. H. used per month, ex- cess at 6¢ per K. W. H. monthly minimum guarantee $1.11. Net subject to 10¢ discount for prompt payment.

Commercial Lighting Rates.

1 to 50-50 watt equivalents				150 K. W. H. at 10¢ per K. W. H. ex. 6¢ K. W. H.		
51	60	"	"	175		
1	70	"	"	200		
71	75	"	"	225		
76	85	"	"	250		
86	90	"	"	275		
91	100	"	"	300		
101	110	"	"	326	Ditto.	Ditto.
111	125	"	"	350		
126	150	"	"	400		
151	175	"	"	450		
176	200	"	"	500		
201	225	"	"	550		
226	250	"	"	600		
231	300	"	"	650		
301	350	"	"	700		
351	400	"	"	800		
401	500	"	"	900		
501	600	"	"	925	K. W. H. at 10¢	925 K. W. H. at 6¢; ex. 4¢ K. W. H.
601	700	"	"	945	945	
701	800	"	"	965	965	
801	900	"	"	985	985	
901	1,000	"	"	1,000	1,000	Ditto.

Above 1,000-50 watt equivalent the rate is one K. W. H. per 50 watt equivalent at 10¢ per K. W. H. One K. W. H. per 50 watt equivalent at 6¢ per K. W. H. Excess at 3¢ per K. W. H.

Monthly minimum $1.11. Regular minimum $11.11 per 50 watt equivalent. Rate and minimum subject to 10% discount for prompt payment.

Georgia Railway and Power Company.

Retail Power Rates Within the City Limits, Atlanta, Ga., on Monthly Basis.

1 H. P. connected	First 75 K. W. H.	6¢ per K. W. H.; Excess 3¢ per K. W. H.	
2	130		
3	185		
4	230		
5	275		
6	325	Ditto.	Ditto.
7	360		
8	400		
9	435		
10	465	Ditto.	Excess 2¢ per K. W. H.
12	500		
15	550		
20	650		
25	700		
30	750		
35	800		
40	850		
50	925		
60	940		
70	955		
80	970		
90	985	Ditto.	Ditto.

Above 100 H. P. the primary and secondary K. W. H. per month are 10 cts. per H. P. connected, the tertiary rate of $1.5¢ per K. W. H. applies on all current used in excess of the primary and secondary K. W. H.

Monthly Minimum Guarantee, Smallest $1.11.

Over 2 H. P. the guarantee is $0.55 per H. P. connected.

Rate and minimum subject to 10% discount for prompt payment.

Georgia Railway and Power Company.

Atlanta, Ga.

Ceiling Fan Minimums.

Fans on power rates where no motors are used carry the following minimum per month:

1 fan	$2.22	gross
2 fans	3.33	"
3 "	3.83	"
4 "	4.44	"
5 "	5.00	"
6 "	5.55	"
7 "	6.11	"

138

8 fans	6.66	gross
9 "	7.22	"
10 "	7.77	"
11 "	8.33	"
12 "	8.86	"
13 "	9.44	"
14 "	9.99	"
15 "	10.55	"
16 "	11.11	"
17 "	11.81	"
18 "	12.22	"
19 "	12.77	"
20 "	13.20	"

Less 10% discount for prompt payment.

Georgia Railway and Power Company.

Residential Cooking and Heating Rate Within City Limits of Atlanta.

Monthly minimum, $2.22.
K. W. hour rate, 5 cts. per K. W. hour.
Less 10% for prompt payment.

Outside City Limits of Atlanta.

Monthly minimum, $2.22.
K. W. hour rate, 6 cts. per K. W. Hour.
Less 10% for prompt payment.
(Use regular standard retain power application.)

Georgia Railway and Power Company.

Residence Lighting Rates in Suburban Districts Not Incorporated.

Just Outside of the City Limits of Atlanta, Ga., Within One-half Mile of Atlanta City Limits.

Primary rate, 10 cts. per K. W. H.
Monthly minimum, $1.66.
Less 10 cts. for prompt payment.

More Than One-half Mile of Atlanta City Limits.

Primary rate, 10 cts. per K. W. H.
Monthly minimum, $2.22.
Less 10% for prompt payment.

Power Rates in Suburban Districts Not Incorporated Just Outside of the City Limits of Atlanta.

Primary power rate 7 cts. per K. W. H. gross.
Secondary power rate 3 cts. per K. W. H. gross.
139 K. W. H. to apply to the various loads are the same at Atlanta schedule.

For Retail Power.

Monthly minimum $2.22.
Excess minimum $1.11 per H. P. connected.
All subject to 10% discount for prompt payment.
Use application form for light and power outside Atlanta.

Georgia Railway and Power Company.

Commercial Lighting Rates in Suburban Districts Not Incorporated Just Outside the City Limits of Atlanta within One-half Mile of Atlanta City Limits.

1	50	50 watt eq.	150	K. W. H. at 10*a*; excess 6 cts. per K. W. H.	
51	60		175		
61	70		200		
71	75		225		
76	85		250		
86	90		275		
91	100		300		
101	110		325	Ditto	Ditto

Minimum monthly minimum within half mile limits, $1.66.
Regular minimum $11. 11¢ per 50 watt equivalent per month.

Discount of 10% on both rates and minimum for prompt payme
More than one-half mile of Atlanta city limits.

1	50	50 watt eq.	150 K. W. H. at 12¢ Excess 6¢ per K. W. H.
51	60		175
61	70		200
71	75		225
76	85		250
86	90		275
91	100		300
101	110		325

Minimum monthly minimum without half-mile limit $2.22.
Regular minimum $11, 11¢ per 50 watt equivalent per month.
Discount of 10% on both rates and minimum for prom
139½ payment.
Use application form for light and power outside Atlan

Lighting Rates in the Following Towns: Hartwell, Royston, L vonia, Decatur, Kirkwood, East Lake, Carrollton, Gainesv Powersville, Cañon.

Monthly Basis.

Residence Lighting Rate.

10¢ per K. W. H. for the first 150 K. W. H. per month, excess 6¢ per K. W. H. Minimum monthly guarantee $1.11. All subj to 10% discount for prompt payment.

Commercial Lighting Rate.

1	50	50 watt equivalent	150 K. W. H. at 10¢ per K. W. H. Excess 6¢ K. W. H.	
51	60		175	
61	70		200	
71	75		225	
76	85		250	
86	90		275	
91	100		300	
101	110		325	
111	125		350	
126	150		400	
151	175		450	ditto ditto
176	200		500	
201	225		550	
226	250		600	
251	300		650	
301	350		700	
351	450		800	
451	500		900	

Minimum monthly guarantee $1.11.
Monthly minimum $11.11 gross per 50 watt equivalent. Rate nd minimum subject to 10% discount for payment promptly.

Retail Power Rates in the Following Towns: Hartwell, Royston, Lavonia, Decatur, Kirkwood, East Lake, Carrollton, Gainesville, Bowersville, Cañon.

Monthly Basis.

Hp. connected	First	Excess
1	75 K. W. H. at 6¢ per K. W. H.	3¢ per K. W. H.
2	130	
3	185	
4	230	
5	275	
6	320	
7	360 Ditto	Ditto
8	400	
140		
9	435	
10	465	2¢ per K. W. H.
12	500	
15	550	
20	650	
25	700	
30	750	
35	800	
40	850	
50	925	

Monthly minimum guarantee, smallest, $2.22.
Over 2 H. P. the guarantee is $1.11 per H. P. connected.
Rates and minimum subject to 10% discount for prompt payment.

Georgia Railway & Power Company.

Lighting Rates in the Followin- Towns: Hapeville, Clarkston, Ingleside, Stone Mountain, Duluth and Whitesburg.

On Monthly Basis.

Residence Lighting Rates.

12¢ per K. W. H. for the first 150 K. W. H. used per month, excess at 6¢ per K. W. H.
Minimum monthly guarantee $1.66.
All subject to 10% discount for prompt payment.

Commercial Lighting Rates.

1 to	50	50 watt equivalent	150 K. W. H. at 12¢ K. W. H.	
			6¢ K. W. H.	
51	60	175		
61	70	200		
71	75	225		
76	85	250		
86	90	275		
91	100	300		
101	110	325	Ditto	Di
111	125	350		
126	150	400		
151	175	450		
176	200	500		

Monthly minimum $1.66.
Regular minimum $11.11¢ per 50 watt, equivalent.
Rate and minimum subject to 10¢ discount for prompt payn

Power Rates in the Following Towns: Hapeville, Clarksto Ingleside, Stone Mountain, Duluth, and Whitesburg.

On Monthly Basis.

1 H. P. connected first	75 K W. H.	7¢ per K. W. H.; exce	
		per K. W. H.	
2	130		
3	185		
141			
4	230		
5	275		
6	320	Ditto	Di
7½	360		
8	400		
9	435		
10	465	" excess 2¢ per K. W. H	
12	500		
15	550		
20	650		
25	700		
30	750		
35	800		
40	850		
50	925		

Monthly minimum guarantee, smallest, $2.22.
Over 2 H. P. the guarantee is $1.11 per H. P. connected.
Rate and minimum subject to 10% discount for prompt payn

Ceiling Fan Minimum for the Following Towns: Hapeville, Ingleside, Clarkston, Stone Mountain, Duluth, and Whitesburg.

Fans on power rates where no motors are used carry the following minimum per month:

1 fan	2.22 gross.
2 fans	3.33
3	3.88
4	4.44
5	5.00
6	5.55
7	6.11
8	6.66
9	7.22
10	7.77
11	8.33
12	8.83
13	9.44
14	9.99
15	10.55
16	11.11
17	11.81
18	12.22
19	12.77
20	13.20

Less 10% discount for prompt payment.

Georgia Railway and Power Company.

Primary Hydro Electric Rates.

142 38,000/22,000/11,000 Volt Service.

K. W.	M. D.	Monthly M. D. charge.	K. W. H. charge.
0	10	2.275	3.13¢
10	20	2.275	1.48
21	30	2.275	1.19
51	100	2.164	1.00
101	200	1.942	.799¢
201	300	1.831	.799¢
301	400	1.610	.733¢
401	500	1.499	.725¢
501	750	1.387	.718¢
751	1,000	1.320	.715¢
1,001	1,250	1.276	.713¢
1,251	1,500	1.165	.661¢
1,501	2,000	1.010	.637¢
2,001	3,000	.954	.611¢
3,001	4,000	.888	.594¢

All of the above rates are subject to a discount of 10% for prom payment.

Georgia Railway & Power Company.

Municipal Hydro Electric Rates.

Service 2,300 Volts, Three-phase 60 Cycles.

K. W. demand.			K. W. h charge.
1	10 at	$2.99 per K. W. M. D. Plus.....	5.5
11	25	1.77	5.1
26	50	1.77	3.6
51	100	1.77	2.2
101	151	1.77	1.8
151 to 500 and above		1.77	.....

1.55¢ for the first 30,000 K. W. H. per month.
Excess over 30,000 K. W. H. per month at .955¢.
501 and above 1.77 per K. W. M. D. Plus 1.44¢ for the first 30,0 K. W. H. per month.
Excess over 30,000 K. W. H. per month at .955¢.
The above rates are subject to a discount of 10% for prom payment.

Georgia Railway and Power Company.

Secondary Hydro Electric Sales.

Georgia Railway and Power Company Secondary Hydro Elect Rates.

38,000/22,000/11,000 Volt Service.

H. P. connected.		K. W. H. charge.	Y'rly guarantee.
50	150	2.11¢	$13.33
151	250	1.22¢	11.11
Above 250 H. P.....		1.11¢	8.88

Less 10% discount for prompt payment.

Rural Services on Hydro Electric Lines.

Rural Service on H. E. Lines.

Cotton Gins, Fertilizer Mixing Plants, and All Short-term Seasonal Business.

13

H. P. connected.	Basic amount.	Basic rate, K. W. H.	Rate per K. W. H. for excess of basic amt.	Minimum seasonal guarantee per H. P. connected.
7½	380	7¢	3¢	$10.00 net.
10	465	7	3	"
15	550	7	3	"
20	650	7	3	"
25	700	7	3	"
30	750	7	3	"
35	800	7	3	"
40	850	7	3	"
50	925	7	2	$9.00 net.
60	940	7	2	"
75	960	7	2	"
80	965	7	2	"
90	970	7	2	"
100	1,000	7	1,000 at 2¢	

Excess 1½¢. $8.00 net.

Over 100 H. P. connected basic amount is 10 K. W. H. per H. P. connected at 7¢ 10 K. W. H. per H. P. connected at 2*a* all on excess of both amounts at 1½¢ subject to 10% discount for prompt payment. Short term business must be operative for at least four months of each year.

Should the customer desire service at any time during the period of temporary discontinuance, the company will allow him to take electricity under the terms and conditions of said contract upon his notifying the company of such desire, one week in advance and upon payment to the company of the sum of $10 for making temporary connection. In the event of such temporary re-connection, a monthly minimum charge of $1.66 gross per H. P. month shall be due and payable while the temporary service is connected.

Contract should be made for a term of five years.

Company furnishes transformers, delivers 550 or 2,300 volts and builds 500 ft. of line. Voltage and line extension to be determined by local conditions.

Rural Service on Hydro-electric Lines.

Grist mills, saw mills, dairies, pumps, etc., on 12 month business same basic amounts, basic and secondary K. W. H. charges as applied to cotton gins.

Monthly minimum guarantee $1.11 per H. P. connected, monthly minimum to be less than $11.11. Subject to 10% disco for prompt payment.

Any seasonal or short term business may be added to th
144 contracts by having the customer sign the short term addi to contract provided for this class of business.

Company will furnish transformers, deliver 550 or 2,300 volts a build 55 ft. line free, voltage and line extension to be determined local conditions.

Georgia Railway & Power Company.

Gas Rates.

Decatur and Surrounding Territory.

$1.30 per M cu. ft. per month less 10¢ per M cu. ft. for pro payment.

Monthly minimum charge 50¢ net.

All gratuitous service to be dispensed with.

Street and Suburban Railway Rates in Atlanta and Suburbs.

The street railway fares to be increased one cent on each five c charged under existing fares.

Transfers under present rules to be issued for a charge of t cents for each transfer ticket issued.

Street railway rates in Gainesville, Georgia.

Street railway fare to be straight six cents per passenger.

EXHIBIT "E."

Section 1. The general assembly of the State of Georgia to ena that from and after the passage of this act, George Hillyer, James Grant, B. D. Smith, J. B. Campbell, Eden Hillyer, John G. We moreland, J. J. Thrasher, J. J. Morrison, W. B. Cox, J. E. Barl William Solomon, W. R. Webster, and such others as they m associate with them, and their successors and assigns, be and th are hereby declared a body politic and corporate by the name a style of the Atlanta Street Railroad Company, and in, and by th name may sue and be sued, plead and be impleaded in any court

law or equity in this State, or where their rights may come
145 question may have and use a common seal, and the same al or destroy at pleasure, and purchase, accept hold, enjoy convey any property, real, personal, or mixed, that may be necessa for the purposes hereinafter set forth, or which they may acquire the progress of their business.

Sec. II. That said company shall have the exclusive power a authority to survey, lay out, construct and equip, use and emp street railroads in the city of Atlanta, subject to the approval of t

ity council thereof, for each route selected, first had and obtained, efore the work thereon shall be commenced, the property of the said ompany to be subject to the same State, county and city taxes as he property of individuals in said city of like value is, or may be ubject to, unless the city council should, at any time, think fit to exmpt the same, either in whole or in part, from the payment of city axes, provided, that the rates of fare and freight upon said railroad hall be subject to the approval of the mayor and city council of the ity of Atlanta.

Sec. III. That the capital stock of said company shall be one hundred and fifty thousand, which may be increased to three hundred housand dollars, should the business of the company require it, books of subscription for which shall be opened in Atlanta, and at ny other point or points which may be deemed advisable in the United States.

Sec. IV. That the officers of said Atlanta Street Railroad Company hall be a president, secretary and five or more directors to be chosen t such time and in such manner as the corporators or a majority f them, may determine, and the said president and board of irectors shall have full power and authority to establish all by-aws, rules and regulations for administering the affairs of said company, and for carrying on the business, and to do all acts 46 and to give all orders therein which may be necessary, and not inconsistent with the constitution and laws of this State, r of the United States.

Sec. V. That the said Atlanta Street Railroad Company shall not mploy any steam engines upon their lines without the consent of he city council, who in granting the order allowing the same, shall prescribe the rules to be observed by said company and by individuals o avoid injury to persons or property by the use of said engines.

Sec. VI. That the said Atlanta Street Railroad Company may exend any one or more of their lines of road in the county of Fulton ver and beyond the corporate limits of said city, not more than ne mile from the present corporate limits, should they see proper o do so, and in that event the damages to the owners of the strip r strips of land through which said road may run shall be ascertained nd settled in the same manner as is prescribed by the charter of the entral Railroad and Banking Company.

Sec. VII. That said Atlanta Street Railroad Company may convey pon their lines, either passengers or freight as the exigencies of the usiness community and public wants may require.

Approved 23 February, 1866.

Exhibit "F."

Section 1. Be it enacted by the general assembly of the State of eorgia, that the charter of the Atlanta Street Railroad Co., inorporated by act of the general assembly of this State, approved

February 23, 1866, be, and the same is, hereby extended and renew for the period of thirty years from and after January 1st, 1896.

147 Sec. II. Be it further enacted, etc., that said Atlanta Str Railroad Company, as now incorporated shall have power purchase the railroads and property of other street railroads in t city of Atlanta, or extending from the city of Atlanta into t counties of Fulton and De Kalb, and to operate the roads so pu chased, provided that nothing in this act shall be construed authorize said company to purchase, lease or otherwise obtain co trol of any other railroad, so as to defect or lessen competition operate monoply.

Sec. III. Be it further enacted, etc., that said Atlanta Street Ra road Company shall have power to hold, purchase, own, use, impro and embellish real estate to be used in connection with its railroa and as may be necessary for its legitimate street railway purpo under such reasonable rules and regulations as it may establish.

Sec. IV. Be it further enacted, etc. that said Atlanta Street Ra road Company shall have power to extend its lines of road to an point or points in the counties of Fulton and De Kalb but making these extensions it shall not use or occupy any public ro or highway without first obtaining permission of the commissione of roads and revenues of the county within which such public road highway may be.

Sec. V. Be it further enacted, etc. That the said Atlanta Str Railroad Company shall have power to adopt and use any moti power adapted to its purposes, subject, in its use within the city Atlanta, to such reasonable rules and regulations as the said city m establish and, without the city of Atlanta, subject to such reaso able rules and regulations as the commissioners of roads an 148 revenues may establish. And said corporation shall ha power to increase its capital stock to a sum not exceeding o million of dollars, and it shall have power to issue its bonds f corporate purposes, and to secure the same by mortgage or trust de in its property, provided that nothing in this act contained sha have the effect or be construed as extending to any railroad, or lin of road or appurtenances, which said Atlanta Street Railroad Co pany may purchase under the authority of this act, any exemptio from taxation of any kind; and provided, also, that nothing in th act contained shall have the effect of anywise extending, enlarg or continuing any exemption from taxation of any kind, in favor the said Atlanta Street Railroad Co. other than may already exist favor of said company, or of saving or reserving to said Atlan Street Railroad Company any right of exemption from taxatio which, under the law, said company would or might be deprived by this amendment under the laws of this State.

Sec. VI. Be it further enacted, that all laws and parts of laws conflict with this act be, and the same are, hereby repealed.

Approved December 26, 1890.

EXHIBIT "G."

Charter of Atlanta Consolidated Street Railway Company.

TATE OF GEORGIA:

y His Excellency W. J. Northern, Governor and Commander-in-Chief of the Army and Navy of this State and the Militia thereof, to all to whom these presents may come, Greeting:

Whereas, Joel Hurt, William H. Patterson, Henry A. Inman, ena R. Bullon, G. L. Thompson and Walter S. Carfield, all of the city of Atlanta, county of Fulton, and State of Georgia; 49 Norwood Robson, of Kirkwood, De Kalb county, Ga., H. E. W. Palmer of Edgewood, Fulton county, Ga.; Alfred A. lasier and James F. A. Clark, of the city of Boston, county of uffolk, State of Massachusetts, Charles A. Coffin, of Lyon, county of ssex, and State of Mass., have filed in the office of the secretary f State certain articles of association with a view of forming a corporation, to be known as "Atlanta Consolidated Street Railway ompany" and with a capital of two million dollars ($2,000,000) r the purpose of constructing, maintaining and operating a raiload, to wit:

A system of street and suburban railroads for public use in the onveyance of persons and property in the counties of Fulton, De alb and Cobb, in Ga., through the various streets of Atlanta, Ga., d from Atlanta to Decatur and through and over the streets of ecatur and from Atlanta to and through West End to West View emetery, and on over and along the streets of said Atlanta, Decatur d West End, and to such localities in said counties of Fulton, e Kalb and Cobb as may be convenient or expedient, and returning Atlanta (provided that where the streets of any city or town and ads of said counties are occupied, consent *much* first be obtained om the proper authorities), and, in addition thereto, to use and aintain and operate its cars and other rolling stock, on, over and pon such tracks already built of other railroad companies which may purchase, lease or otherwise lawfully own or control, and er all rights of way it may obtain from time to time and have mplied with the statutes in such cases made and provided:

Therefore, the State of Georgia hereby grants unto the above med persons, their successors and assigns, full authority by and under the said name of Atlanta Consolidated Street Railway 50 Company, to exercise the powers and privileges of a corporation for the purpose above stated and in accordance with the id articles of association and the laws of this State.

In witness whereof, these presents have been signed by the g ernor and attested by the secretary of State of the State of Ga., Atlanta, and the great seal of the State of Ga., attached thereto, t sixteenth day of May, 1891.

W. J. NORTHERN,
Governor.

By the Governor:
PHILIP COOK,
Secretary of State.

Atlanta Consolidated Street Railway Company Changes Its Name Atlanta Railway and Power Company.

To all to whom these presents may come, Greeting:

Whereas, The Atlanta Consolidated Street Railway Company corporation created and existing under the laws of this State, h filed in this office in terms of the law, a petition asking that charter be amended by changing its corporate name from Atla Consolidated Street Railway Company to Atlanta Railway & Po Co., and has complied with all the requirements of the law in s cases made and provided, therefore, the State of Georgia here amends the charter of the said Atlanta Consolidated Street Railw Company by changing its corporate name from Atlanta Cons dated Street Railway Company to Atlanta Railway and Power C pany.

In witness whereof, These presents have been signed by the S retary of State, and the great seal has been attached hereto at t capitol, in Atlanta, on this first day of July, 1899.

(Signed) PHILLIP COOK,
Secretary of State of Georgia.

(Seal attached.)

151 EXHIBIT "H."

Charter of Georgia Railway and Electric Company.

STATE OF GEORGIA:

Office of Secretary of State,

Atlanta, Ga.

To all to whom these presents may come, Greeting:

Whereas, in pursuance of an act of the general assembly of t State of Georgia, approved December 17, 1892, and acts amendat thereof, H. M. Atkinson, P. S. Arkwright, R. E. Cullinane, S. Bradley, M. B. Lipscomb, F. M. Sisk, G. W. Brine, J. G. Rossm J. R. Hunter and W. B. Stovall, all of Atlanta, Fulton coun Ga., having filed in the office of the secretary of State a cert

petition seeking the formation of a corporation to be known as Georgia Railway & Electric Company, with its principal office in Atlanta, Ga., with a capital stock of three million dollars ($3,000,000) of which at least three hundred thousand dollars may be preferred stock, with the right to increase either common or preferred stock, or both, as provided by law, for the purpose of purchasing, owning, constructing, equipping, maintaining and operating a street and suburban railroad within the city of Atlanta, Ga., and to and from said city to divers points within the counties of Fulton, De Kalb and in said State (with the right hereafter to extend according to law, its lines as stated in the petition for incorporation), along the routes indicated in the application for this certificate, a copy of which said applicatin is hereto attached and made a part hereof; said corporation to be chartered for the term of one hundred and years and to have, exercise, and enjoy all the rights, powers and privileges incident to corporations of such character under the laws of this State; especially the powers and privileges of trans-
152 porting persons and property over its streets and suburban lines, and to charge for the carriage thereof; and also to purchase and own, build, maintain and operate, electric light and power plants, and to furnish and sell electric light and electric power, and having complied with the statutes in such cases made and provided. Therefore, the State of Georgia hereby grants unto the above named persons, their successors and assigns, full authority by and under the said name of Georgia Railway and Electric Company to exercise the powers and privileges of a corporation for the purpose above stated, subject to the provisions of article four (4) of the constitution of this State, and all the laws governing railroad companies of force at the date of this certificate, or that may hereafter become of force, either by constitutional or statute law, or by any rules and regulations of the railroad commission of this State, or otherwise, which govern and control the operation of railroads in this State. In witness whereof, there presents have been signed by the Secretary of State and to which is annexed the great seal of the State, at Atlanta, Ga., this twenty eighth day of January, 1922.

PHILLIP COOK,
Secretary of State.

EXHIBIT "H."

First Amendment to Charter of Georgia Railway and Electric Company.

STATE OF GEORGIA

Office of Secretary of State,

Atlanta.

153 To all to whom these presents may come, Greeting:

Whereas, in pursuance of an act of the general assembly of the State of Georgia, approved December 17, 1892 and acts amendatory

thereof, Georgia Railway and Electric Company having filed in t office a certain petition asking that its charter be amended so as authorize an increase of its capital stock, and having complied w the statutes in such cases made and provided:

Therefore, The State of Georgia hereby amends the charter of s Georgia Railway & Electric Company, as follows, to wit:

The capital stock of said corporation is increased from the sum $3,000,000 to the sum of six million, eight hundred thousa ($6,800,000) dollars, consisting of $5,000,000 of common stock a $1,800,000 of preferred stock.

The said railway company to exercise the powers and privile hereby conferred, subject to article four (4) of the constitution this State, and all laws governing railroad companies, at the da hereof, or that may hereafter become of force either by constitutio or statute law, or by any rules or regulations of the railroad comm sion of this State, or otherwise, which govern and control the ope tion of railroads in this State.

In witness whereof, these presents have been signed by the Sec tary of State of the State of Georgia, at the capitol, in Atlanta a the great seal of the State attached hereto, this twenty-sixth day September, 1902.

PHILLIP COOK,
Secretary of State.

Second Amendment to Charter of Georgia Railway & Electric Company.

154 STATE OF GEORGIA:

Office of Secretary of State,

Atlanta.

To all to whom these presents may come, Greeting:

Whereas, in pursuance of an act of the general assembly of t State of Georgia, approved December 17, 1892, and acts amendato thereof, Georgia Railway & Electric Company having filed in t office a certain petition asking that its charter be amended so as authorize an increase of its capital stock, and having complied w the statutes in such cases made and provided:

Therefore, the State of Georgia hereby amends the charter of s Georgia Railway & Electric Company, as follows, to wit:

So as to increase the capital stock of said corporatoin from t sum of six millions, eight hundred thousand ($6,800,000) dolla to the sum of eight million four hundred and fourteen thousan six hundred ($8,414,600) dollars, consisting of $2,400,000 preferr stock and $6,114,600 common stock.

The said railroad company to exercise the powers and privileg herein conferred, subject to article four (4) of the constitution

his State, and all the laws governing railroad companies at the ate hereof, or that may hereafter become of force, either by consti- utional or statute law, or by any rules or regulations of the railroad ommission — operation of railroads in this State.

In witness whereof, these presents have been signed by the Secre- ary of State of the State of Georgia, at the capitol in Atlanta and the reat seal of the State attached hereto, this eighth day of July, 1903.

PHILLIP COOK,
Secretary of State.

55 *Third Amendment to Charter of Georgia Railway & Electric Company.*

TATE OF GEORGIA:

Office of Secretary of State,

Atlanta.

o whom it may concern, Greeting:

Georgia Railway and Electric Company, a corporation chartered y the secretary of State of Georgia, January 28, 1902, and amended nder the general law, September 20, 1902, and July 8, 1905, re- pectively, having petitioned for an amendment of the charter of aid corporation in terms of the law in such cases made and provided, he corporate powers and privileges set out in the provisions of ivision 4 of section 1 of article 6 of chapter 2 of the Code of eorgia, 1895, and particularly the provisions contained in sections 181, 2182 and 2183 of said code, providing for the grant of cor- orate powers and privileges by the secretary of State to street rail- oad companies are hereby conferred upon Georgia Railway and lectric Company.

In testimony whereof, I have hereunto set my hand and affixed he seal of my office, at the capitol, in Atlanta, this 16 day of Oct., 903, and of the independence of the United States of America the 28.

[SEAL.]

PHILIP COOK,
Secretary of State.

EXHIBIT "I."

Deed from Atlanta Street Railway Company to Atlanta Consolidated Street Railway Company.

Deed Book C-4, Page 669, Fulton County Records.

EORGIA,
Fulton County:

This indenture made and entered into this the twenty-first day f September, 1891, between the Atlanta Street Railroad Company

of the one part, and the Atlanta Consolidated Street Railw
156 Company of the other part (both being corporations und
the laws of the State of Georgia, and having their respecti
offices and places of business in Atlanta, in said county);

Witnesseth: That whereas said party of the first part (herei
after called the Atlanta Company), did on the 15 day of Sept., 189
at a meeting of its stockholders wherein all of its stock was repr
sented, by a unanimous vote, pass a resolution as follows:

"Whereas, The several stockholders of this company are interest
in the development and extension of the business and lines of th
Atlanta Consolidated Street Railway Company, a corporation estab
lished under the laws of the State of Georgia, and having its prin
cipal place of business at Atlanta, in said State (hereinafter calle
the Consolidated Company).

"And whereas, The Consolidated Company desires to acquire a
the real estate, road bed, tracks, rolling stock, equipments and pro
erty of every kind and description, owned by this company, inclu
ing all its contracts, choses in action, rights, privileges an
franchises:

"And whereas, by reason of their interest in said Consolidat
Company, said several stockholders are willing that all of the co
pany's property should be so acquired by the Consolidated Compan
and hereafter owned and enjoyed by it, in consideration of th
assumption by the Consolidated Company of all such indebtedne
as may be owing by this company.

Now then, In consideration of the premises, and of the expectati
of the part of said several stockholders of being benefited as stoc
holders of the Consolidated Company, or as parties otherwise interes
in its business, by that company's acquiring and holding to its ow
use said property, rights, franchises, etc., of this compan
157 it is voted that the directors of this company be, and a
hereby authorized and directed, in its name and behalf, t
cause to be executed and delivered, proper and sufficient deeds, an
any other suitable instrument of writing, conveying and transferri
to the Consolidated Company, for its sole use and benefit, in co
sideration of the assumption of its debts, as previously provided, a
the real estate, road bed, tracks, rolling stock, equipments and pro
erty of every kind and description, owned by this company, now
at the time the conveyance or transfers are made, including all i
contracts, choses-in-action, rights, privileges, and franchises. Th
Consolidated Company shall, however, as a part of the transaction b
which it acquires said property, franchises, etc., execute and deliv
to the said Atlanta Street Railroad Company an agreement in writin
to assume and pay all its indebtedness."

And whereas, afterwards, to wit: on said 15 day of Sept., th
board of directors of said Atlanta Company did meet and resolve a
follows:

"Whereas, at a special meeting of the stockholders of this com
pany, held on the 15 day of September, 1891, at which every stock

holder of the company was present in person or by proxy, a vote, whereof the following is a copy was unanimously adopted, viz:

"Whereas, the several stockholders of this company are interested in the development and extension of the business and lines of the Atlanta Consolidated Street Railway Company, a corporation established under the laws of the State of Georgia, and having its principal place of business at Atlanta, in said State (hereinafter called the Consolidated Company).

"And whereas, the Consolidated Company desires to acquire all the real estate, road bed, tracks, rolling stock, equipment and property of every kind and description, owned by this company, including all its contracts, choses-in-action, rights, privileges and franchises.

"And whereas, by reason of their interest in said Consolidated Company, said several stockholders are willing that all of the company's property should be so acquired by the Consolidated Company, and hereafter owned and enjoyed by it, in consideration of the assumption by the Consolidated Company in all such indebtedness as may be owing by this company.

Now then, in consideration of the premises, and of the expectation on the part of said several stockholders of being benefited as stockholders of the Consolidated Company, or as parties otherwise interested in its business, by that company's acquiring and holding to its own use said property, rights, franchises, etc., of this company, it is voted that the directors of this company be, and are, hereby authorized and directed, in its name and behalf, to cause to be executed and delivered, property and sufficient deeds and any other suitable instrument in writing, conveying and transferring to the Consolidated Company for its sole use and benefit, in consideration of the assumption of the debts, as previously provided, all the real estate, road bed, tracks, rolling stock, equipment, and property of every kind and description, owned by this company, now or at the time the conveyance or transfers are made, including all its contracts, choses-in-action, rights, privileges, and franchises. The Consolidated Company shall, however, as a part of the transaction by which it acquires said property, franchises, etc., execute and deliver to the Atlanta Street Railroad Company an agreement in writing to assume and pay for all its indebtedness."

"Now, then it is voted that the president and treasurer of the company are hereby authorized and directed in its name and behalf to make execute and deliver to the Atlanta Consolidated Street Railway Company proper deeds and any other instruments for carrying out the purpose of said vote adopted by the stockholders;

"Voted further, that the president and treasurer obtain from said Consolidated Company an agreement in writing to assume any pay all the indebtedness of this company."

Now, pursuant to said action of said stockholders and directors for and in consideration of the sum of five ($5.00) dollars to the said Atlanta Company by said Atlanta Consolidated Street Railway

Company (hereinafter called the Consolidated Company) in hand paid, at and before the delivery of these presents, the receipt whereof is hereby acknowledged, as well as in consideration of the undertaking of said Consolidated Company to assume and pay all the indebtedness of said Atlanta Company, to it delivered simultaneously with the delivery of these presents; the said Atlanta Company has bargained and sold, and does hereby sell, and convey unto said Consolidated Company, its heirs and assigns and successors, all the real estate, road bed, tracks, rolling stock equipments and property of very kind and description, now owned by the said Atlanta Company, including all its contracts, choses-in-action, rights, privileges and franchises.

And which railroads are more fully described as follows:

Route of the Atlanta Street Railroad.

On Peachtree Street, from Wall Street, north throughout the city to Wilson Avenue, then on Wilson Avenue to Piedmont Park, also on Ponce de Leon Avenue, from Peachtreet Street to Ponce de Leon Springs, also on Marietta Street, from Peachtree Street to the city limits and beyond to Howell's Mill Road, opposite the Exposition Mills. On Decatur Street from Peachtree Street to Daniel St., on Edgewood Avenue from Peachtree Street to Pryor Street. On Broad Street from Marietta Street to Alabama Street, Alabama Street to Whitehall Street, Whitehall Street to a point near the city limits thence across the company's right of way and under the Central Railroad to Peters Street; along Peters Street to Park Street, along Park Street to Lee Street, along Lee to Gordon and along Gordon Street to the western limits of West End. Also on Hunter Street from Broad to Whitehall, also on Alabama Street from Whitehall to Loyd, along Loyd to Waverly Place, along Waverly Place to Washington, along Washington to Jones, along Jones to Capitol Ave., and along Capital Ave. to Bass Street. To have and to hold, the said rights, things and premises, with all and singular the rights, members and appurtenances thereof to the same being or belonging or in any wise appertaining to the only proper use, benefit and behoof of the said Consolidated Company, its heirs, assigns and successors, forever in fee simple.

And the said Atlanta Company, for itself (its heirs) and legal representatives, the said rights, things and premises and appurtenances unto the said Consolidated Company, its heirs, assigns and successors, against the said Atlanta Company, its heirs, assigns and legal representatives and all and every other person or persons whatever, shall and will warrant and forever defend by virtue of these presents.

In witness whereof, the said Atlanta Company has caused its name and its seal to be hereunto signed and put, pursuant to said resolution, by its president H. E. W. Palmer, and its treasurer, Alfred A. Glasier, the day and year first above written.

[SEAL.] THE ATLANTA STREET RAILROAD COMPANY,
By H. E. W. PALMER,
President.

161 ALFRED A. GLASIER,
Treasurer.

Signed, sealed and delivered in the presence of
T. A. HAMMOND, JR.
W. A. SPENCER, [SEAL.]
N. P., Fulton County, Ga.

Signed, sealed and delivered by Alfred A. Glasier, Treasurer, in presence of
ROBERT T. CLAPP.
CHAS. HALL ADAMS. [SEAL.]
Commissioner of Deeds for the State of Georgia in the State of Massachusetts.

STATE OF MASSACHUSETTS,
County of Suffolk,
City of Boston, ss:

I, Charles Hall Adams, Commissioner of Deeds in said State of Massachusetts, for the State of Georgia, do certify that A. A. Glasier whose signature I above attested is to me personally known and he did sign deed in presence of myself and R. P. Clapp, the other attesting witness, for the purposes in said deed set forth, this twenty-sixth day of September A. D. 1891.

(Signed) CHAS. HALL ADAMS,
[SEAL.] *Commissioner of Deeds for the State of Georgia in the State of Mass.*

Deed of Atlanta Railway and Power Company to Georgia Railway and Electric Company.

Deed Book 160, Page 181, Fulton County Records.

STATE OF GEORIA,
Fulton County:

This indenture, made this twentieth day of February A. D.
162 1902, by and between Atlanta Railway and Power Co., a corporation under the laws of the State of Georgia, having its principal place of business in the city of Atlanta, said Fulton

county, Ga., party of the first part, and Georgia Railway & Electric Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Georgia, having its principal place of business in the city of Atlanta, said Fulton county, Ga., party of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of ten thousand dollars ($10,000.00) and other valuable considerations to it in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, assigned, transferred, aliened, conveyed, released and confirmed, and by these presents does grant, bargain, sell, assign, transfer, alien, convey and release and confirm unto the said party of the second part, its successors and assigns, all the property, real, personal and mixed, of any kind whatsoever of said party of the first part, together with all its electric lighting and street and suburban railway plants and properties, all of its real estate, buildings, improvements and fixtures, all of its roadbed, rights of way, tracks, rails, sidings, turnouts, rolling stock, equipment, motors, cars, bridges and right in or over bridges, culverts, piers, depots, grounds, stations, workshops, steam plant, electric plant, machinery, engines, piping, boilers, dynamos, electric machinery, motors, wires, poles, lines, appliances, fixtures, apparatus, lamps, conduits, ducts, tubes, subways, cables, manholes, fuel, supplies, office furniture, fixtures, tools, wagons, live stock, contracts, rights, privileges, easements and franchises, and all of its property of whatever description and wheresoever situated, together with all and singular the rights, privileges and
163 appurtenances thereto belonging or in any wise appertaining, and all things in action, contracts, claims, demands, business and good will of the said party of the first part, as well as in equity, together with all the rights, tolls, issues, incomes, privileges and franchises growing out of or pertaining to said property, and all rights, interest, profits, easements and franchises of the said party of the first part, with full power of the party of the second part, its successors and assigns, to succeed to and enjoy all the rights, privileges, immunities and franchises now held or exercised by the said party of the first part.

There are included among other things, in the property hereby conveyed, the following described property, to wit:

1. The following lines of railway, situated in the city of Atlanta and its vicinity, and in the counties of Fulton and De Kalb, and in various municipalities in each of said counties, in the State of Georgia, namely,

On Marietta Street from Peachtree Street to a point near Van Winkle's post office, on Decatur Street from Peachtree Street to Cornelia Street; on Broad Street from Peachtree Street to Mitchell Street, on Mitchell Street from Broad Street to Davis Street; on Madison Ave. from Mitchell Street to Nelson Street, on Nelson Street from Madison Ave., to Tattnall Street; on Walker Street from Nelson Street to Peters Street, on Peters Street from Walker Street to Lee

d Street, on Leonard Street from Peters Street to Ella Street, on
lla Street from Leonard Street to West End Ave., on West End
ve., from Ella Street to Ashby Street, and Ashby Street from West
nd Ave., to Lucile Ave., on Lucile Ave., from Ashby Street to Gor-
on Street, on Gordon Street from Lucile Avenue, to entrance of
West View Cemetery, on Edgewood Ave., from Peachtree
64 Street to Hurt Street, on North Boulevard from Edgewood
Ave., to Southern Railway, on Jackson Street from Edgewood
ve., to Ponce de Leon Ave., on Exchange Place from Edgewood Ave.,
o Ivy Street; on Tattnall Street from Nelson Street to West Hunter
treet, on West Hunter Street from Tattnall Street to city limits, on
orth Pryor Street from Edgewood Ave., to Peachtree St , on Hous-
on Street from Peachtree St., to Hilliard St. from Houston St. to
ighland Ave., on Highland Ave., from Hilliard Street to Virginia
ve., on Virginia Ave., from Highland Ave.. to Boulevard, on Hurt
treet from Decatur Road to Euclid Ave., on Euclid Ave., from Eliza-
eth St. to Moreland Ave., and on Moreland Ave., about a half mile
orth from Euclid Ave., on Elizabeth Street from Euclid Ave., to
dgewood Ave., on Decatur Road from Hurt Street to Moreland Ave.,
n Alabama Street from Broad Street to Central Ave., on Whitehall
treet from Alabama Street to alley way leading under Central and
tlanta and West Point Railroad, along said alley way from White-
all Street to Peters Street, along Peters Street to Park Street; along
Park Street to Lee Street, on Lee Street from Park St., to East Point
oad; thence along East Point road through towns of Oakland City
nd McPherson to town of East Point, about six miles distant from
ity; on Gordon Street from Lee Street to Holderness Street on Smith
Street from Whitehall Street to Glenn Street, on Hunter Street from
Broad Street to Whitehall Street, on Luckie St from Broad Street to
Spring Street, on Spring Street from Luckie Street to Powers Street
or West Peachtree Place; on Powers Street from Spring to West
Peachtree Street, on West Peachtree Street from Baker Street to Sixth
Street, on Mitchell Street from Broad Street to Capital Av., on Capital
Ave., from Mitchell Street to Bass Street on Grant Street from De-
catur Street to East Fair Street on Central Ave., from Ala-
165 bama Street to Pulliam Street, on Pulliam Street from Cen-
tral Avenue to Clark Street; on Clark Street from Pulliam
Street to Washington Street, on Waverly Place from Central Ave.,
to Washington Street, on Washington Street from Waverly Place to
Ormond Street, on Trinity Ave. from Washington Street to East
Fair Street; on East Fair Street from Trinity Ave., to Pearl Street,
on Pearl St. through private right of way, to county of De Kalb at
Dehlgreen's Station, thence further along said private right of way
and through county of De Kalb to a point opposite Agnes Scott
Institute in town of Decatur about seven miles distant from center
of city; on Park Ave., from West Fair Street to Berne St., on Berne
Street from Park Ave., to South Boulevard on South Boulevard to
a point about two hundred feet south of Berne Street, on Fraser
Street from East Fair Street to East Hunter Street, on East Hunter
Street from Fraser Street to South Pryor Street, on South Pryor
Street from Alabama Street to Ridge Ave., from South Pryor

St. along Ridge Ave., and McDonough Road, to a point opposi
Federal Prison, on Georgia Ave., from South Pryor Street to Cheroke
Ave., on Cherokee Ave., from Georgia Ave. to Ormond Street
on Peachtree Street from Marietta Street to Southern Railwa
bridge at Brookwood, on Ponce de Leon Ave., from Peachtree Stre
to Southern Railway, on Linden Street from Peachtree Street t
West Peachtree Street on Tenth Street from Peachtree Street t
Piedmont Ave., and on Fourteenth Street from Peachtree Street t
Piedmont Ave., and Jones Ave., from Marietta Street to Gray Street
on Gray Street from Jones Ave., to Simpson Street, on Simpso
Street from Gray Street to Walnut Street, on Courtland Street fro
Houston Street to Pine St., on Pine Street from Courtland St. t
Angier Ave., and Angier Ave., from Pine Street to North Boulevar
on, Piedmont Avenue from Pine Street to Fourteenth Street, o

Forsyth Street from Church Street to West Fair Street; o

166 West Fair Street from Forsyth Street to Cooper Street o

Cooper Street from Fair Street to Hendrix Ave. (o
Hendrix Ave., from Cooper Street to South Pryor Street, o
Ormond Street from South Pryor Street to Cherokee Ave., on Rich
ardson Street from Cooper Street to McDaniel Street, on McDanie
Street throughout its length and over private right of wa
and several country roads to Fort McPherson, known as the For
McPherson line; on Glenn Street from McDaniel Street to car barn
near Southern Railway; on Crumley Street from Cooper Street abou
seven hundred feet to baseball ground, on Church Street fro
Forsyth Street to Cain Street, on Cain Street from Church Street t
Orme Street, on Orme Street from Cain Street to Mills Street, o
Mills Street from Orme Street to Luckie Street, on Luckie Stree
from Mills Street to North Ave., on Hemphill Ave., from North
Ave., to Pumping Station of City Water Works, on Ellis Street fro
Church Street to Hilliard Street, on Hilliard Street from Ellis Stree
to Irwin St. on Irwin St., from Hilliard St. to Sampson St., o
Sampson St., from Irwin St. through private right of way under
Southern Railway to Lake Ave., thence along Lake Ave., to Euclid
Ave., thence from Euclid Ave., along McLendon Street to the county
of De Kalb and along private right of way and Decatur road to town
of Decatur about seven miles from the city of Atlanta, thence
through and around town of Decatur on Davis Street from Mitchell
Street to Magnolia St., on Magnolia St. from Davis St. to Chestnut
St., on Haynes St. from Mitchell St. to Chapel St., on Chapel St
from Haynes St. to West Fair St., on West Fair St. from Chapel
St. to Chestnut St. on Chestnut Street from West Fair Street t
Greensferry Ave., on Greensferry Ave. from Chestnut St. to Lee St.
on Lee St. from Greensferry Ave. to Park St. on Park Street fro

Lee Street to Ashby St. on Ashby Street from Park Street t

167 Matthews St. on Woodward Ave., from Washington Street t

Kelley St., on Kelley Street from Woodward Ave. to Glen
wood Ave., on Glenwood Ave. from Kelley Street to Grant St., o
Grant St. from Glenwood Ave., to Augusta Ave., on Augusta Ave
from Grant Street to Cherokee Ave., from a point known as Soldier
Home Junction, along private right of way and western boundary

f De Kalb county, to Atlanta Ave., along Atlanta Ave., to Underood Ave., and along Underwood Ave., and private right of way to oldiers Home, known as Soldiers' Home Line.

Provided, however, that the particular description of real and ersonal property above given shall not be construed to exclude any ther property, real or personal, rights, privileges, franchises and ssets intended to be conveyed hereby, it being the intention hereof o hereby convey to said party of the second part all property, assets, ights, privileges, easements, immunities and franchises of whatever ind and wherever situated, whether hereinbefore described or not, hich, or any right, title or interest in which, the said party of the irst part now owns or is in any manner entitled to.

The several portions of property now owned by the party of the irst part and hereinbefore described and conveyed are conveyed subect, however, to the following mortgages, so far as such property s severally covered by said mortgages, to wit:

1. A mortgage executed by the Atlanta Street Railroad Company o the Central Trust Company of New York, as trustee, dated June 0, 1890, to secure an issue of $225,000.00 of bonds of said Co.

2. A mortgage executed by the Atlanta Consolidated Street Railay Company to the Mercantile Trust and Deposit Company of Baltimore, as trustee, dated January 2, 1899, securing $2,275,000 of onds of said company.

3. A mortgage executed by the Atlanta Railway & Power
168 Company and a similar one executed by the Atlanta Railway Company to the Mercantile Trust and Deposit Company of Baltimore, as trustee, dated July 2, 1900, securing bonds to the mount of $2,500,000.00 of said Atlanta Railway and Power Company.

And the said party of the second part, as a part of the consideraion for this conveyance assumes the payment of the said bonds now issued and outstanding under the said mortgages above referred to, nd also assumes the payment of all other liens and incumbrances pon said property and all other debts of the said party of the first art, and agrees to hold the said party of the first part harmless gainst the same.

To have and to hold, the said property, rights, interests, privileges, nd franchises, together with all the rights, immunities, easements, nd appurtenances belonging to or in anywise appertaining to the ame to the said party of the second part, its successors and assigns, orever in fee simple, and the said party of the first part hereby warants the title to the property unto the said party of the second part, its successors and assigns, against the claims of all persons, except as above stated, and further, the said party of the first part hereby covenants and agrees to make, execute and deliver to said party of the second part, its successors and assigns, all such further instruments and conveyances as in the opinion of the said party of the second part, or its legal counsel, may be necessary or proper to further secure and assure the title, enjoyment and possession of said party of the

second part to the property, rights, immunities, privileges and fr
chises intended to be hereby conveyed.

In witness whereof, the said party of the first part has caused th
presents to be executed and delivered in its name and beh
169 and under its corporate seal, by its proper officers, hereto du
authorized by proper corporate action on the day and ye
first above written as the date hereof.

ATLANTA RAILWAY AND POWER COMPANY, [SEAL.]
By D. A. BELDIN,
President.
A. J. CHAPMAN,
Secretary.

Signed, sealed and delivered in the presence of
W. H. GLENN.
W. H. WILLIAMS,
N. P., Fulton County, Ga.

(EXHIBIT "K.")

Grant to Atlanta Street Railroad Company to Construct Railw
on Any Street in City and Across Bridges on Broad Street.
Not Required to Flag Between Crossings or Macadamize Stree
(3) *Exemption from Taxes.* (4) *Amount of Fare to be Charge*

An Ordinance in Relation to the Atlanta Street Railroad Compan
and for Other Purposes.

Be it ordained by the Mayor and Council of the City of Atlan

1st. That authority is hereby granted to the Atlanta Street Rai
road Company to construct street railways on any street in the cit
and across the bridge on Broad Street.

2. That so much of section two of the ordinance of Sept. 21, 186
as requires the company to flag between crossings, also section six
same date, requiring the company to macadamize the street for th
entire distance around the track, is repealed, and for the presen
said company is hereby required to do so in cases of necessity, to b
judged by the committee on streets.

3. The road, rolling and live stock of said company is hereb
exempted from taxation for the term of fifty years.

4. The charter for passage on said road shall not exce
170 twenty cents for any through line and not exceeding te
cents for half lines or short distances.

Resolution passed and adopted January 1, 1869, Book 5, pag
480.

For proceedings leading up to this ordinance see:
Council meetings December 18, 1868, Book 5, page 470.
" " " 28, 1868, " 5, " 473.

(EXHIBIT "L.")

Action of Council Approving the Merging of Certain Lines of Street Railroad Into the Atlanta Consolidated Railroad Company.

Petition.

To the Honorable Mayor and General Council of the City of Atlanta:

The petition of the Atlanta Consolidated Street Railway Co. shows that since the 20th day of May, 1891, its charter has been confirmed by the general assembly of Ga., and authority to purchase other street railroads has been given to it, and it has purchased all of the property and franchises of the following street railroad companies in Atlanta, Ga., to wit: The Atlanta Street Railroad Co., the West End and Atlanta Street Railroad Company, the Gate City Street Railroad Co., the Fulton County Street Railroad Company, and the Atlanta and Edgewood Street Railroad Company, it prays the consent of the Mayor and Council of Atlanta for it to operate said lines according to prior grants to said companies respectively. It claims that the right to do so already exists, but wishes to have its franchises free from any question or possibility of doubt.

ATLANTA CONSOLIDATED STREET
RAILWAY COMPANY,
By JOEL HURT,
President.

Resolution.

Whereas, the Atlanta Consolidated Street Railway Com-
171 pany has purchased the rights, property and franchises of the following street railroad companies in Atlanta, to wit: The Atlanta Street Railroad Company, the West End and Atlanta Street Railroad Company, the Gate City Street Railroad Company, the Fulton County Street Railroad Company, and the Atlanta and Edgewood Street Railroad Co.

Resolved, That the rights and franchises consented to and granted to said several street railroad companies and to said Atlanta Consolidated Street Railway Company in anticipation of such purchase, made by the Mayor and Council of the City of Atlanta on the 20 day of May, 1891, as appears by the minutes of the Mayor and Council on pages 683, 684, 685, 686 and approved by the mayor on May 20, 1891, and all subsequent grants made to either of said companies, are hereby reconsented and regranted to said Atlanta Consolidated Street Railway Company on the terms specified in the said grants and consents both as to privileges and obligations.

And the Mayor and Council of Atlanta consent that said Atlanta Consolidated Street Railroad Company may exercise upon and in the

streets of said city heretofore occupied by said companies respectiv all the rights and privileges heretofore owned or possessed by eit of said companies respectively, including the rights of extension any of said lines granted by the Mayor and Council of Atlanta said date in 1891, and subsequently thereto.

Provided, however, that nothing herein shall operate as an e tension of the time fixed within which anything was required to done on any of said lines as a condition to the right granted there to construct any street railroad, or part of the same on any str or streets.

Adopted December 7, 1891.

172 EXHIBIT "M."

Atlanta, Ga., March 11, 1912

By Special Committee Appointed to Negotiate with the Georg Railway & Power Company and the Georgia Railway and El tric Company.

Whereas, your committee have had under consideration an a justment of charges for electric current for light, heat and powe and have held several meetings, and negotiated with the represent tives of said two companies, which negotiations are set forth detail in the report of your committee attached hereto, and follo ing such negotiations, we believe that, if the following ordinan is passed, same will be accepted by the said companies, by reso tion properly and legally passed, and filed with the clerk of coun within fifteen days from the approval of said ordinance:

Therefore, be it ordained by the Mayor and General Council the City of Atlanta, as follows:

Section 1. That the city of Atlanta agrees that the Georgia Rai way and Power Company, subject to any existing franchises grant by the city to said companies, may absorb, by consolidation, com bination or merger, the following companies; Georgia Power Co Atlanta Power Company, Piedmont Power Company, Interst Power Co., Atlanta Hydro Electric Co., North Georgia Power C Atlanta Water and Electric Company, and lease the Georgia Rai way and Electric Company, subject to any existing franchis granted to the said company by the city of Atlanta, provided, how ever, that the Georgia Railway and Power Company may, at i option, surrender its franchise within the city of Atlanta or radius of seven miles from its center, and conduct its busine within said city and within said radius under the franchises, right and privileges, of the Georgia Railway and Electric Company, sub ject to the following conditions.

(*a*) That the percentage charged on gross receipts of the
173 Georgia Railway and Electric Company as now fixed and established by ordinance shall be maintained and preserve and a like percentage maintained and preserved on all extensio

made by or in the name of Georgia Railway and Electric Company, and furthermore, on all business done by the Georgia Railway and Power Company in addition to the business derived through the franchises of the Georgia Railway and Electric Company within a radius of seven miles of the center of the city and all other provisions of the ordinance of 1902, and amendments thereto relating to the grant to the Georgia Railway and Electric Company so far as applicable to the business hereafter done by the Georgia Railway and Power Company, as herein agreed, shall be applied and maintained.

(*b*) The Georgia Railway and Electric Company or the Georgia Railway and Power Company, whichever one is doing the business of furnishing electric current for light, heat and power purposes, agrees that the maximum rates to be charged persons or corporations for private or commercial purposes within the present or future limits of the city of Atlanta shall be for regular one year or longer term contracts for the regular supply of the entire electric current used in the premises, and subject to the monthly minimum charge, as follows, the maximum rate per K. W. for current for lighting purposes shall not exceed seven (7¢) cents net per K. W. hour after making the usual discount on monthly bills for payment on or before the tenth day of the month, and for current for exclusively power and heating purposes shall not exceed four and one half (4½¢) cents net per K. W. after making the usual discount on monthly, bills for payment on or before the tenth day of each month.

That the present minimum charge per month made by the Georgia Railway and Electric Company for lighting purposes of two ($2.00) dollars net shall be reduced to one ($1.00)
174 dollar net per month, and that the present minimum charge for power purposes made by the Georgia Railway and Electric Company shall be reduced to one ($1.00) dollar per month for motors up to two horse power and shall be reduced to fifty (50¢) cents net per horse power per month for the horse power capacity of the motor in excess of two horse power.

That the rates as above provided shall become effective not later than the first day of January, 1913, and shall become effective earlier than the said date in the event that the electric current from the Tallulah Falls development of the Georgia Railway & Power Company is ready to be supplied in the city of Atlanta at an earlier date than the said first day of January, 1913.

That the rates when made effective shall apply to all regular contracts with the Georgia Railway and Electric Company for the supplying of electric current in existence at the date when the said rates become effective hereafter provided said contracts were originally made for a period of one year or longer.

That the said new rates as above established shall not result in the increase of any classes of regular rates now in effect by the Georgia Railway and Electric Company.

(*c*) That the said company shall for the purpose of supplying electric current to a customer outside the underground district no located on its lines extend its overhead lines along the highway within the city of Atlanta without cost to the customer to an exten necessary to reach a point in front of the premises of the custome not to exceed an extension of two hundred (200) feet from th lines as existing at the time the application is made, that it will from the lines as existing or the lines as so extended, make th necessary service connection under the same rules as are now i effect with regard to such service connections. That is t
175 say, that regular overhead service connection will be mad without expense to the customer from overhead lines, pr vided it can be done without setting any additional poles for suc service connections between street lines and point at which curren is to be delivered.

(*d*) That the terms of the grants to the said Georgia Railwa and Electric Company and the Georgia Railway and Power Com pany and the several companies above named as being absorbed o taken over by the Georgia Railway and Power Company, shall no be interfered with by this grant, but same shall remain as now fixe and established by the ordinance of the city and the laws govern ing such franchises.

(*e*) The Georgia Railway & Electric Company or the Georgi Railway and Power Company, whichever is the active company i the city of Atlanta shall hereafter pay into the treasurer of th city of Atlanta a sum equal to the cost or charge for paving sixtee feet on all streets in the city of Atlanta on which said company o companies have double tracks and on which pavements or repave ments shall hereafter be laid, provided, that where said compan or companies have only a single track at the time of pavement o repavement only the cost of paving eleven feet of such streets, whe hereafter paved or repaired, shall be charged and collected. Wit reference to repairs, the present law shall be continued. The pro visions, of this section shall be enforcible only with reference t pavements upon streets where there is an assessment therefor. Th assessment against the street car company or the calculation of th amount due under this ordinance shall be based upon the propor tion of the entire cost of the pavement without regard to the differen character of pavements used. In the paving of streets with perma nent such as asphalt, bitulithic or similar pavements, joint pave ment shall be used between the street car tracks and eighteen
176 inches beyond the outside rail. This last provision not t apply where a street is paved with broken stone and chec or water bound macadam or similar pavement.

(*f*) The city's water supply from any site on Chattahoochee Rive shall in no way be interfered with by said companies or either o them or by any of their consolidated companies, in any way, eithe when the season is dry or when the season is wet.

(*g*) That all of the provisions of this ordinance shall apply to the limits of the city as now established or to the limits of the city as hereafter extended at any future time or times.

Section 2. This ordinance and the rights and privileges herein granted to said companies shall be maintained and established by the city in good faith so long as the said companies conform to and observe the conditions of this grant.

Section 3. That all ordinances and parts of ordinances in conflict with this ordinance be and the same are hereby repealed and this ordinance shall become effective upon the filing of resolution from the Georgia Railway and Electric Co. and the Georgia Railway & Power Company accepting the terms hereof with the clerk of council, provided same shall be filed within fifteen days from the date of the approval of this ordinance, and, in default of such filing, the provisions of this ordinance shall be of no avail.

Atlanta, Ga., April 20, 1912.

To the Honorable Mayor and General Council of the City of Atlanta:

In accordance with the ordinance of the Mayor and General Council of the city of Atlanta adopted by council on March 18, 1912, concurred in by the aldermanic board on March 18, 1912, and approved by the mayor on April 6, 1912, Georgia Railway and Electric Company and Georgia Railway & Power Company do
177 hereby accept the terms of the said ordinance. A certified copy of the resolution of the board of directors of Georgia Railway and Electric Company and a certified copy of the resolution of the board of directors of the Georgia Railway and Power Company authorizing this acceptance to be made are hereto attached. This acceptance and these resolutions are made in compliance with the requirements of section three of the said ordinance.

Yours very respectfully,

GEORGIA RAILWAY AND ELECTRIC COMPANY,

(Sd.) By G. W. BRINE,
Vice President.

(Sg.) PAUL D. REID,
Asst. Secy.

GEORGIA RAILWAY & POWER COMPANY,

(Sd.) By P. S. ARKWRIGHT,
President.

(Sg.) PAUL D. REID,
Asst. Secy.

Resolution of Directors of Georgia Railway and Electric Co.

On motion, duly seconded, the following resolution was unanimously adopted, to wit:

Resolved, that the action of the officers of this company in filing a written acceptance of the ordinance passed by the general council of the city of Atlanta, approved by the mayor with reference to the adjudgment of the lighting and power rates in the city of Atlanta, and other matters covered by the said ordinance be, and the same is hereby ratified, confirmed and adopted.

Resolution of directors of Georgia Railway & Power Company.

On motion, duly seconded, the following resolution was unanimously adopted, to wit:

Resolved, that the action of the officers of this company in filing
a written acceptance of the ordinance passed by the general
178 council of the city of Atlanta, approved by the mayor, with
reference to the adjustment of the lighting and power rates in the city of Atlanta and other matters covered by the said ordinance be, and the same is hereby ratified, confirmed and adopted.

"EXHIBIT (P)."

Text of Report.

The committee's report, which is signed by J. L. McCord as chairman, in which the railroad commission's decision is reviewed and criticised as unsound and unfortunate, follows:

"To the Mayor and City Council of Atlanta:

"The railroad commission of Georgia has announced its decision in the matter of increased rates and fares petitioned for by the Georgia Railway & Power Company and its subsidiaries. With reference thereto your committee reports as follows:

In its immediate results the decision (if disturbed) would mean increased rates for gas, hydro-electric power, and residence lighting and heating service in Atlanta, commercial lighting rates would be somewhat reduced. As to street railway fares in Atlanta, the railroad commission declines to assume jurisdiction because such fares are the subject of contract between the city and the company. Nevertheless the commission went outside the province and rendered an opinion in which the view is expressed that the street railway fare in Atlanta ought to be increased. The commission's conclusions on that subject are embodied in a recommendation to council that it amend the street railway franchise in Atlanta and authorize a 6 cent fare without charge for transfers.

"The increases in gas and electric rates that were specifically allowed would cost the company's patrons about $400,000 a year. Of that sum the city of Atlanta would be compelled to pay considerably more than it now pays for municipal electric service. Had the petitions been granted in full there would have resulted a total annual increase of more than $1,500,000 in revenue to the company. In its opinion the commission recognizes that during the year 1917 the company made more money than it had ever made before. Likewise the commission recognizes that in 1918 the company will make more than it made in 1917 (without any increased rates) although it is predicted that wage increases are to be expected in the future.

Despite such a showing the commission concluded that an emergency exists calling for still more revenue in order that the company might be aided in meeting its capital requirements. It is not suggested that such capital requirements pertain to the properties in the city of Atlanta. Apparently it is with reference to outside projects that the company requires some further financing.

Minimum Valuation.

From various sources the commission gathered information upon the basis of which it concluded that a "minimum" valuation of the company's physical properties and working capital in 1917 amount to $31,761,659. As to the properties outside Atlanta the commission reached its valuation conclusions largely upon its previous action with reference to stock and bond issue since 1912. Having in 1912 and subsequently, approved the scheme of organization of the power company and having given vitality to earlier projects taken over by that company, the commission evidently determined to adhere to its former conclusions and not go back on the plan of capitalization that it had once approved.

With reference to properties inside Atlanta, owned by the Georgia Railway and Electric Company, the commission largely rests its valuation conclusions upon the basis of an appraisal made in 1912 by an engineer employed by the company at the time it was endeavoring to secure approval by the commission of its consolidation plans. That appraisal was not introduced in evidence in this rate proceeding but was called for by the commission presumably after the evidence was closed. Your committee did not know of its existence until it was referred to by the commission in its opinion, and there has been no opportunity to inspect it or to cross examine the engineer who made it up.

But having thus arrived at what it terms a minimum" valuation of the company's properties, the commission finds that in 1917 the company nevertheless derived a return of 6.91 (nearly 7) per cent on such valuation, after deducting all operating expenses, taxes, and after making allowance for a depreciation reserve amounting to $777,256 in 1917 alone. Even such a return is deemed inadequate by the commission.

Beyond the Issue.

With reference to this matter of valuation of the company's pro
erties and the return derived thereon, it should be said that throug
out the case the power company insist that it was not asking a fa
return on what it deemed to be the value of its properties. T
reason for that attitude was that the company did not welcome th
delay that would have been involved had anything like a real valu
tion been undertaken. The commission therefore, went beyond th
issues in the case as made by the company itself and dr w on its ow
resources for the purpose of getting up what it terms a "minimum
valuation.

As to the distribution of the company's profits, the commissi
likewise took occasion to approve in terms the arrangement
which the power company has lease for nearly one thousand yea
all the properties of the Georgia Railway and Electric Compan

Under that lease the power company gets all the revenu
181 earned by the electric company and in turn pays all the e
penses, interest, taxes and other fixed charges, and in add
tion pays to the stockholders of the electric company an annual div
dend of 5 per cent on their preferred stock and 8 per cent on the
common stock. Such rental was held to be no more than prope
notwithstanding the water contained in the stock of the electric com
pany which, however, the commission seems to have ignored.

The commission gives the impression that your committee fu
nished no evidence at the hearing. Aside from the technical i
accuracy of that suggestion, attention is invited to the fact that aft
the power company had but in all its evidence counsel for your com
mittee desired sixty but urged the commission to grant them thir
days' time in which to analyze the company's evidence and prepa
their own. The commission declined that request and gave the com
mittee's attorneys only eighteen days' time. Nevertheless the com
mission consumed more than forty five days in arriving at its ow
conclusion and in promulgating its opinion.

On that subject it should likewise be said that throughout the ca
the power company consistently adopted an obstructive attitud
toward your committee and frustrated every effort on its part
produce information contained in the company's books and recor
The right to inspect such books and records was denied.

Most Unfortunate.

Altogether your committee has concluded that this decision of th
Georgia Railroad commission is a most unfortunate one, not onl
because of the specific increases allowed, but in addition because
the whole tenor and purport of the commission's attitude as reflecte

in its opinion. That opinion apparently ignores fundamenta
182 rights as between the public and the company in assumin
that those fundamental rights have in some way been affecte

by the existence of war; it assumes that the commission's authority has been enlarged without constitutional or legislative action, and manifests a spirit of benevolent according to which the commission assumes it is charged with the responsibility of developing water powers in Georgia by encouraging the investment of outside capital in such projects, thereby imposing on the people of Atlanta the burden of high rates in order that such outside projects may be fostered.

Your committee dislikes the necessity and duty of thus expressing such an unfavorable view concerning the commission's decision. It is nevertheless driven to the conclusion that the inevitable day has come when this issue must be fought out and settled now for all time. Your committee is conscious of the great benefits that inure from the development of water power projects throughout the State, but it is equally convinced that there are other ways to attain these purposes than to impose on the people the continual maintenance of high rates in order that the Atlanta properties may be exploited and made to bear the burden of providing funds for such other operations.

Your committee has diligently endeavored to protect the interests of the public and makes this report in order that you may determine what proceedings should be had and furnishing the means therefor.

Your committee makes the following recommendations:

1. Prior to September 1st, legal proceedings should be instituted to enjoin and prevent increases in gas, light and power rates, as well those charged to the public as to the city of Atlanta.

2. City Council should not authorize an increase in street car fares.

183 3. Should the company undertake legal proceedings to compel the railroad commission of Georgia to assume jurisdiction over street railway fares in Atlanta, the city's interests should be protected in such proceedings.

4. Your committee further recommends that steps be taken as soon as possible to procure a divorcement of the properties of the Georgia Railway and Power Company and those of the Georgia Railway and Electric Company. Such a course is demanded since otherwise it may be expected that the people will be called to continue to bear the burden of sustaining outside projects in which they have little or no interest directly.

Be it resolved by the mayor and general council. That the report of the committee appointed to consider and take action with reference to the question of increases in gas, electric light and power, street railway rates in Atlanta is approved, its recommendation adopted and the committee continued. Be it further

Resolved, That the committee in conference with the city attorney is empowered and direct- to institute such legal proceedings as may seem proper, having in view the prevention of increases in gas and electric light and power rates in Atlanta, the cancellation of the

opinion and order of the railroad commission, and be further em powered and directed likewise to represent the city's interests i sustaining the validity of the present franchises, fixing a 5 cent stre car fare in the city of Atlanta, and that said attorney and committe are directed likewise to take such steps as may seem proper, havin in view the institution of legal proceedings intended to divorce com pletely the ownership, operation and management of the Georgi Railway and Power Company and the Georgia Railway & Electr Company. It is further

Resolved. That said committee be authorized to associat
184 in behalf of the city such assistant counsel as may be deeme necessary and advisable."

Due and legal service of the within petition, rule nisi and proce acknowledged, copy received, copy, process, copy of process an service of same waived. All other and further service waived.

Aug. 24, 1918.

C. M. CANDLER.
GEO. HILLYER.
JNO. T. BOIFEUILLET.
PAUL B. TRAMMELL.
JAMES A. PERRY.

Filed in office this the 23 day of Aug. 1918.

S. T. CONYERS,
Deputy Clerk.

This case coming on to be heard upon the issues made by th pleadings, and after hearing the same it is considered, ordered an adjudged by the court that the mandamus prayed for be and th same hereby is denied.

October 2nd, 1918.

GEO. L. BELL,
Judge S. C. A. C.

GEORGIA,
Fulton County:

Fulton Superior Court, November Term, 1918.

No. 40900.

GEORGIA RAILWAY AND POWER CO.

v.

RAILROAD COMMISSION OF GA. et al.

Mandamus.

Now comes C. M. Candler, Geo. Hillyer, Paul B. Trammell, Jn T. Boifeuillet and J. A. Perry, railroad commissioners of the Sta of Georgia, defendants in the above stated case, by James K. Hine

pecial attorney for the railroad commission of Georgia, and demur to the petition in the above stated case, on the following
85 grounds, to wit:

1. Because no cause of action is set out in said petition.

2. Because plaintiff is not entitled to the writ of mandamus under he facts stated in said petition.

3. Because the railroad commission of Georgia is without power, uthority and jurisdiction to fix and establish rates for the Georgia Railway & Power Company in the municipalities named in said etition because the exercise of such power would impair valid subisting contracts between said municipalities and petitioner, and beause such action on the part of the defendants would have the effect f repealing the municipal ordinances, which are set out in the etition in said case.

4. Because under the proviso in section 5 of the act of Aug. 23d, 907, enlarging the jurisdiction of the commission, said proviso eing now contained in section 2662 of the Civil Code of Georgia, nd being as follows: "Provided, however, that nothing herein shall e construed to impair any valid subsisting contract now in existence etween any municipality and any such company; and provided, hat this section shall not operate as a repeal of any existing unicipal ordinance, "the railroad commission of Georgia can not nd has not the power, authority, and jurisdiction to fix passenger ares for petitioner in the municipalities of Atlanta, Decatur, Edgeood and College Park, under the contracts and ordinances referred o and set out in petition of said case.

JAMES K. HINES,
Special Atty. for the Railroad Commission of Georgia.

Filed in office this 13th day of September, 1918.

T. C. MILLER,
Deputy Clerk.

86 GEORGIA,
Fulton County:

Now comes Railroad Commission of Georgia, and C. M. Candler, Geo. Hillyer, Paul B. Trammell, Jno. T. Boifeuillet, and J. A. Perry, as Railroad Commissioners of said State, and as defendants in he above stated cause, by their attorney, Jas. K. Hines, and for nswer to the petition in said case say:

1. These defendants admit the allegations of paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, (A), 16 (B), 16 (C), 18, 19, 20, 21, 23, 24, 25, 26, 28, 29, 33, 34, 35, 37, 38, 40, 43, 44, 45, 46, 47, 48, 50 and 52.

2. These defendants deny the allegations of paragraph 6 of said etition, except as herein qualified. These defendants submit that he railroad commission of Georgia is without power, authority and urisdiction to fix fares for applicant where such action would impair

valid subsisting contracts between the municipalities in which p
tioner operates its street railway lines and petitioner in existence
Aug. 23, 1907, or where such action would have the effect of
pealing ordinances which existed on August 23, 1907.

3. These defendants deny the allegations of paragraph 12 of s
petition.

4. These defendants deny the allegations of paragraph 16 of s
petition except as herein qualified.

5. These defendants admit the allegations of paragraph 17
said petition *as* except as herein qualified. The Rapid Transit
for a short period during a rate war sold three tickets for ten ce

6. These defendants deny the allegations of paragraphs 22, 30,
and 32 and 36 of said petition.

7. These defendants admit the allegations of paragraph 39
said petition, except as herein qualified. They deny that
franchise contract therein set out is indefinite.

187 8. From lack of information, these defendants can neith
admit nor deny the allegations of paragraph 41 of s
petition.

9. These defendants deny the allegations of paragraph 42 and
of said petition, except as herein qualified. They admit that und
the constitution and the laws of this State the power of fixing r
road fares is vested in the legislature except as limited in the cons
tution itself. Joel Hurt was the only witness who was sworn in
behalf of protestants, but the latter contended that applicant had n
made out a case of its evidence.

10. These defendants admit the allegations of paragraph 51
said petition, except as herein qualified. They deny that the co
mission has jurisdiction and authority to grant the increased str
railway fares, sought by petitioner.

11. These defendants deny the allegations of paragraphs 53 a
54 of said petition. From lack of information, these defendants c
neither admit nor deny the allegations of paragraph 55.

Wherefore, having fully answered said petition, these defendan
pray to be hence discharged with their reasonable costs in this behal
expended.

JAMES K. HINES,
Atty. for Defts.

GEORGIA,
Fulton County:

Before the undersigned, personally came C. M. Candler, who
oath deposes and says that he is one of the defendants in the abo
stated case, and is chairman of the railroad commission of Ga., an
that the facts stated in the foregoing answer are true.

C. M. CANDLER.

Sworn to and subscribed before me, this 3rd day of Sep., 1918.

J. P. WEBSTER,
N. P. at Large.

188 Filed in office this the 13th day of Sept., 1918.

T. C. MILLER,
Deputy Clerk.

GEORGIA,
Fulton County:

Be it remembered that at the September term, 1918, of the superior court of Fulton county, Ga., to wit, on September 19, 1918, there came on to be heard before said court His Honor Judge Geo. L. Bell, judge of said court, presiding, a certain cause, to wit, the petition of the Georgia Railway and Power Company against C. M. Candler, Geo. Hillyer, Paul B. Trammell, John T. Boifeullet and J. A. Perry, constituting the Railroad Commission of Ga., same being cause number 40,900, Fulton Superior Court, and being the hearing on the rule nisi on a petition to show cause why a mandamus absolute should not issue in behalf of the petition- against the defendants as prayed for in the petition, that said cause proceeded from day to day until Oct. 2nd, 1918, at which time His Honor, Judge Geo. L. Bell, rendered a decision in the cause overruling the prayers of the petition and refusing to grant a mandamus absolute as prayed in the petition, to which ruling and order, same being a final order in the cause said petition- then and there excepted and now excepts, and the petitioner says that His Honor Judge Geo. L. Bell erred as a matter of law in overruling said petition, and in denying said mandamus absolute as in the petition prayed, and that His Honor, Judge Geo. L. Bell, erred as a matter of law in not granting and ordering said mandamus on each and every ground alleged in the petition.

As evidence in the cause, it was agreed by all parties thereto that the facts in the cause were as stated in the petition and exhibited thereto, and that said petition and exhibits thereto did truly state the facts in the cause to be considered as evidence before the court
189 on said hearing, and it was further agreed by all parties to said cause that by mandamus was the proper procedure in the cause so stated to the court in open court.

The petitioner specifies as material to a clear understanding of the errors complained of the following parts of the record, to wit:

1. The original petition with all exhibits thereto, omitting entries of service.

2. Demurrer of defendants.

3. Answer of defendants.

4. Order of the court denying the mandamus absolute.

And now within the time required by law, comes said petitioner Georgia Railway & Power Company and tenders this its bill of exceptions and prays that the same may be signed and certified that the errors complained of may be reviewed and corrected.

KING AND SPALDING,
C. T. & L. C. AND J. L. HOPKINS,
BREWSTER, HOWELL AND HEYMAN,
COLQUITT AND CONYERS,
ROSSER, SLATON, PHILLIPS AND HOPKINS,
Attys. for Ga. Railway & Power Co., Plff's in Error.

I do certify that the foregoing bill of exceptions is true and contains all the evidence, and specifies all the record material to a clear understanding of the errors complained of, and the clerk of the superior court of Fulton county, Ga., is hereby ordered to make out a complete copy of such parts of the record in said case as are included in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the Supreme Court of Ga., that the errors alleged to have been committed may be considered and corrected.

This Oct. 2nd, 1918.

GEO. L. BELL,
Judge S. C. A. C.

190 Due and legal service of the within bill of exceptions acknowledged, copy and all other and further notice and service waived.

JAMES K. HINES,
Atty. for Defts. in Error.

This Oct. 2nd, 1918.

Filed in office this the 2nd day of Oct., 1918.

ARNOLD BROYLES,
Clerk.

Superior Court of Georgia.

Atlanta, March 15, 1919.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

GEORGIA RY. & POWER CO.

v.

RAILROAD COMMISSION OF GA. et al.

This came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

in so far as it denies the writ of mandamus requiring the Railroad Commission of Ga., to determine and fix the rate of fare on the line of railway of the company, plaintiff in error, from the City of College Park to the City of Atlanta, and one line from Decatur to Atlanta, and in so far as it denies the writ requiring the commission to take jurisdiction of the matter of transfers. Except in so far as is above indicated, the judgment of the court below is reversed because the court erred in denying the writ of mandamus. All the Justices concur, except Fish, C. J., dissenting in so far as the judgment is reversed, and Hill, J., dissenting in so far as the judgment is affirmed.

Bill of costs: $10.00.

191 Supreme Court of the State of Georgia.

Clerk's Office, Atlanta.

March 26, 1919.

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Georgia Ry. & Power Company paid the above bill of cost.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Z. D. HARRISON,
Clerk.

Fulton Superior Court.

No. —.

THE GA. RY. & POWER CO.

v.

C. M. CANDLER et al. and THE RAILROAD COMMISSION OF GA.

The remittitur in the above stated case having been sent down from the Supreme Court to the Superior Court of Fulton county, and now awaits the action of the superior court;

Now, therefore, it is considered, ordered and adjudged that the judgment of the Supreme Court in the above stated case, be and the same is hereby in each and every particular made the judgment of this the superior court;

And it is further considered, ordered and adjudged that, except as covered by the contracts between the Ga. Ry. & Power Co., and the cities of Decatur and College Park, it is the duty of the said Railroad Commission to fix the fares upon the lines of the railroad of the Ga. Ry. & Power Co., and to that end the writ of mandamus is hereby granted requiring the said commission to take the jurisdiction therein

as is directed and required in the opinion of the Supreme C
rendered in the above stated case.
This 26th day of March, 1919.

GEO. L. BELL,
Judge S. C. A. C

O. K.
JAS. K. HINES,
Special Atty.

192 Filed in office this the 26th day of March, 1919.
W. W. CLARKE,
Deputy Cler

(*Answer & Cross-bill.*)

GEORGIA,
Fulton County:

Now comes the Georgia Railway & Electric Company and
Georgia Railway & Power Company, the defendants named, and
answer to the petition filed in said case and by way of cross
allege—

1. Defendants admit the allegations of paragraphs 1 and 2.

2. Defendants deny the allegations of paragraph 3 as alleged
the petition. Defendants say that under the constitution and
of the State of Georgia they received and obtained their power
authority to construct and operate a street railway system from
State and that the plaintiff has and had no power or authority
confer such power upon defendants. Defendants received
franchises from the State of Georgia. Defendants admit that
tioner passed the ordinance or resolution as set out in Exhibit "A"
the petition.

3. Defendants deny the allegations of paragraph 4 as therein
leged. Defendants admit that Exhibit "B" was passed by petitio
(Exhibit "B" to petition.)

4. Defendants cannot, for want of sufficient information, eit
admit or deny the allegations of paragraph 5. Defendants ad
that the Georgia Railway & Power Company operates the railw
in question and that the lease or contract referred to in said pa
graph of the petition was executed and delivered in the year 191

5. In answer to the second paragraph of the petition (there be
two paragraphs of the petition numbered 5) defendants deny
allegations as therein alleged.

192½ 6. Defendants admit the allegations of paragraph 6
the petition.

7. Defendants deny the allegations of paragraph 7 of the petit

8. Defendants admit that 5 cents has been charged on cer
parts of the College Park line from College Park to Atlanta and

Atlanta to College Park, and 7 cents for all intermediate travel between College Park and Atlanta since the first day of October, 1920. Defendants say that it would now be charging 7 cents per passengers for patrons from Atlanta to College Park and 7 cents per passenger from College Park to Atlanta except for the restraining order granted in the present case. Defendants claim that they have a right to charge 7 cents per passenger for service from Atlanta to College Park and 7 cents per passenger for service from College Park to Atlanta, for the reasons hereinafter more fully set out in this answer and cross bill.

9. Defendants deny the allegations of paragraph 9 of the petition. Defendants admit that Exhibit "C" is a correct copy of what is known as general order 14. Defendants deny that the railroad commission of the State of Georgia had any right, power or authority to pass that order. Defendants say that general order 14 is not germane to the subject matter of the present suit.

Defendants say that the railroad commission of the State of Georgia in its order of September 22, 1920, did in so far as said commission itself considered that it had any power or authority with reference to fares on the College Park line fix the rate of fares to be charged all passengers riding upon said line at 7 cents per passenger. Among other things the commission's order of September 22, 1920, provided—

"Effective October 1, 1920, applicant is hereby authorized 193 to charge and collect as its maximum passenger fare the sum of seven (7) cents per passenger where a six (6) cent fare is now charged, for one continuous ride over and on its city and suburban lines of railway, or any zone thereof as now established, except such fares on the Main Decatur and College Park routes as are fixed by contracts between the company and the cities of Decatur and College Park held by the Supreme Court of Georgia to be valid contracts." Said order was the fixing of fares at 7 cents per passenger on said College Park line in so far as the commission itself held that it had jurisdiction to fix and regulate fares upon said line.

In said commission's order of September 22, 1920, the commission further held and declared:

"The five cent fares now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes and on intermediate territory on these routes are discriminatory. This commission is without power to increase them."

Defendants further say and allege that if petitioner here claims the Georgia Railroad Commission has jurisdiction to fix or regulate fares on the entire College Park line and in so far as petitioner claims under any order of the commission with reference to the same, that such claim must not only be a recognition but must be an asserting of the commission's jurisdiction with reference to fares regarding

College Park traffic and that this court, being a court of equity should hold that petitioner is estopped from now on hereafter denying the jurisdiction of the commission to fix fares with reference to all patrons or passengers using said College Park line including College Park traffic or passengers.

194 10. Defendants admit the allegations of paragraph 10 of the petition. Defendants themselves claim the right, power and authority to discontinue transfer fares and privileges with reference to all passenger traffic over which the railroad commission has not been given jurisdiction and to discontinue transfer fares or privileges with reference to what is claimed and designated in the petition as College Park traffic.

11. Defendants admit the allegations of paragraph- 11, 12, 13 and 14 of the petition.

12. Defendants deny the allegations of paragraph 15 as alleged. Defendants say that the record and judgment in said case speaks for itself.

13. Defendants deny the allegations of paragraph 16 of the petition.

14. Defendants admit the allegations of paragraph 17 of the petition.

15. Defendants admit the allegations of paragraph 18 that on or about the 15th day of April, 1919, said Georgia Railway & Power Company filed with the Georgia Railroad Commission its petition to discontinue using free transfers on what is referred to in the petition as College Park traffic and defendants admit that petitioners appeared before the commission and resisted defendant's petition. Defendants say that the issuing of transfers entitles the person or passengers receiving a transfer to transfer from one car line operated by defendants to another and to ride on the second line without the payment of additional fare. Defendants operate 157 miles of track on different routes and over different streets in the corporate limits of the city of Atlanta. Defendants also operate a line from Atlanta to Hapeville a distance of 9.520 miles, said line branching off from what is known as the College Park line at Hapeville Junction and running thence 2.474 miles to Hapeville. Defendants also operate many suburban lines radiating from Atlanta in different di-
195 rections and running through many different townships and municipalities, these lines aggregating 212 miles of single track. Defendants show that any passenger or patron (other than what is called the College Park or Decatur traffic) using any of the said lines of defendants and desiring to transfer to any other line and ride upon such line are compelled and have to pay 7 cents as fare before they are entitled to a transfer. Defendants further show that any passenger riding or boarding any of the lines of defendants (other than College Park or Decatur traffic) and merely riding thereon without transfers are compelled and have to pay 7 cents per

passenger. The distance from College Park to Atlanta is 8.482 miles. To allow a passenger to board a car in College Park to pay 5 cents and ride from College Park to Atlanta and then have the right to demand a transfer, without the payment of additional fare, and in addition to riding from College Park to Atlanta to then board any of the cars on the other lines of defendants and ride upon the same when all other patrons boarding the College Park line at intermediate points between College Park and Atlanta, and passenger in Atlanta have to pay 7 cents for the right to receive or demand a transfer and have to pay 7 cents as fare to merely ride on the line to which the College Park traffic transfers, and where the fare on the line transferred to is itself fixed at 7 cents per passenger is illegal, discriminatory and unconstitutional and violates the constitutional provision of the State of Georgia as contained in section 6463, 6464 and 6467 hereinafter set out and more fully described. Defendants say that the allegations hereafter made with reference to illegal, discriminatory and unconstitutional rates with reference to College Park traffic also applies with reference to transfers demanded by and issued to such passengers.

196 Defendants deny that the railroad commission of the State of Georgia has any authority to compel defendant to issue transfers to College Park traffic, the commission holding that it has no jurisdiction to regulate fares with reference to said traffic and the issuing of transfers being part of the regulation with reference to fares.

Defendants admit that petitioner appeared before the railroad commission of the State of Georgia, insisting upon the jurisdiction of the commission with reference to requiring defendant to issue transfers to the College Park traffic, defendants say that petitioner not only insisted that the railroad commission had jurisdiction to compel defendants to issue transfers to College Park traffic, but now in its present petition claims all the benefits and advantages of the asserted jurisdiction of said commission with reference to such fares. Defendants say that in law, in justice and in equity petitioner cannot claim and assert the Georgia Railroad Commission has jurisdiction to compel and order defendant to issue transfers to College Park passengers and hold under the benefits of such asserted claim of jurisdiction on the part of the railroad commission, and then on the other hand in contravention of such claim assert that the Georgia Railroad Commission has no jurisdiction over the fixing of the fares with reference to College Park traffic. Defendants say and allege that petitioner's claim and assertion that the commission has jurisdiction with reference to College Park traffic so as to compel the defendants to issue transfers to College Park passengers estops petitioner from denying the jurisdiction of the commission to fix fares to be charged with reference to such traffic and passengers. Defendants assert that in law, in justice and in equity petitioner cannot at the same time claim that the commission has jurisdiction with reference to fares and assert, receive and hold all the benefits derived from

197 such asserted and claimed jurisdiction and then deny that the commission has jurisdiction to fix and regulate fares with

reference to the College Park traffic or passengers because of the claim of some so-called contract.

Defendants say and allege that petitioner's assertion of the commission's jurisdiction and its claim under the commission's orders as set out in the petition subject petitioner to the commission's jurisdiction with reference to all matters pertaining to the fixing of fares—be charged the College Park traffic or passengers.

16. Defendants deny the allegations of paragraph 19. Defendants say the commission did on September 22, 1920, pass an order, the material parts of which are attached to and made a part of this answer and cross bill and marked Exhibit "A".

16. Defendants admit the allegations of paragraph 20 of the petition.

17. Defendants deny the allegations of paragraph 21.

18. The allegations of paragraph 22 are denied. Defendants say that the plaintiff's claim made in this paragraph of the petition in so far as it claims that the Georgia Railroad Commission had or has jurisdiction over fares, or jurisdiction to pass orders with reference to fares to be charged College Park traffic, is an assertion by petitioner that the commission has jurisdiction to make orders with reference to and affecting the fares to be charged College Park passengers, and that such claim on the part of petitioner is not only an assertion of the commission's jurisdiction but is a submission to such jurisdiction, for petitioner cannot claim benefits under any purported order of the commission without not only an acquiescence, but also an assertion of jurisdiction on the part of the commission. For this reason defendants say that petitioner should be held by this court, a

198 court of equity, to be estopped from denying the power, authority and jurisdiction of the commission with reference to College Park traffic.

19. Defendants deny the allegations of paragraph 23 of the petition. Defendants say and allege that in this paragraph *of* the petition- seeks in judicio to claim certain rights under and by virtue of an order of the railroad commission of the State of Georgia in which order petitioner claims the commission itself fixed a charge of a five cents fare as to College Park, and to give free transfers as before practiced by said Power Company. For petitioner to claim under an order of the railroad commission petitioner must not only recognize and submit to the jurisdiction, but must also claim and assert the jurisdiction of the commission to pass such order, and such claim on the part of petitioner should be held to estop it from denying the commission's jurisdiction over or with reference to fares.

20. Defendants deny the allegations of paragraphs 24, 25, 26, 27 and 28 of the petition.

21. Defendants cannot for want of sufficient information either admit or deny the allegations of paragraphs 29 and 30 of the petition.

22. Defendants deny the allegations of paragraphs 31, 32, 33, 34, 35 and 36 of the petition.

23. Defendants cannot for want of sufficient information either admit or deny the allegations of paragraphs 37 and 38 of the petition.

24. Defendants allege paragraph- 39 and 40 of the petition do not require an answer.

25. Defendants deny the allegations of paragraphs 41, 42, 43, 44, 45 and 46 of the petition.

26. Defendants deny that petitioner is entitled to any of
199 the relief for which it prays.

For further answer and cross bill defendants allege:

27. What is known as the College Park street car line is a suburban railway running from Atlanta to College Park, a distance of 8.482 miles.

28. Said line was constructed and operated by virtue of the power and authority received from and conferred by the State of Georgia to defendants or its predecessors in title.

29. Said line runs from the corner of Broad and Alabama Streets in the City of Atlanta over various streets of said municipality and what was formerly West End, now a part of the City of Atlanta, to the limits of said city a distance of 4.576 miles, then over what is known as the East Point public road outside of any municipality thence to and through what formerly was the town of Oakland City and over the streets of said municipality, thence on the said East Point public road through Fort McPherson and to and through the town of East Point to the present northern limits of the town of College Park, a distance of 7.309 miles from said starting point in the city of Atlanta to said present northern limits of College Park, thence in College Park, the entire distance of the line being 8.482 miles, and running within the limits of College Park a distance of only 1,173 miles of the entire length of said line from Atlanta to College Park.

30. Defendants or their predecessors in title received consent from the city of Atlanta, the county of Fulton (with reference to the part of said line constructed through no municipality) Oakland City and East Point to construct the parts of said College Point line located within the respective limits of said municipalities and the county of Fulton. In 1901 petitioner consented to the construction of
200 said suburban street railway line in and through College Park and the said consent was subsequently transferred to the Georgia Railway & Electric Company, its successors and assigns, as shown by Exhibit "A" attached to the petition.

31. In the foregoing consent there was no stipulation regulation or provision of the so called contract with reference to fares. On to wit, November 6, 1905, petitioner passed an ordinance, said ordinance and the acceptance being attached to the petition as Exhibit "B." Among other things the said ordinance contained a provision as follows:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta." Said provision is hereafter called the "so called contract provision."

32. Defendants allege and say that said so called contract provision is illegal, invalid and without force and effect; that said provision was never valid or legal, that if at any time it was binding, legal or valid, it is not now binding or legal; defendants further alleges and show that said so called contract provision has been terminated by defendants and is no longer enforcible as a contract provision if it ever had any binding effect; and defendants — cannot be enforced against them for the reasons heretofore set out and those hereafter to be stated.

33. Defendants allege that the fixing or regulation of rates or fares is a governmental or police function and that even in jurisdictions where the constitution of the State does not prevent the granting or abridging of the exercise of the police power and there is no inhibition against the granting of such power to a municipality, such grant of power or authority can only be and must be
201 conferred by express and explicit terms allowing of no other constitution. Defendants say that no such power or authority has ever been conferred upon petitioner by the legislature of the State of Georgia or by the constitution of the State of Georgia, that no power to regulate rates or fares has been conferred by this State upon petitioner and that petitioner has never possessed and does not now possess such power. Defendants further say that the power to contract with reference to fares or rates cannot be inferred even if a municipality is given express authority with reference to regulation and that even the power to regulate with reference to fares or rates does not confer any power or authority upon any municipality in this State to make a contract with reference thereto. Defendants allege and show that no power or authority has ever been conferred by this State, by the legislature or constitution of this State, upon petitioner to contract with reference to fares, and defendants allege that petitioner does not now and has never possessed any such power. Defendants say that for the reasons stated defendants had no right, power or authority to fix fares or to enter into said so called contract provision and that said provision is therefore ultra vires and void.

34. Defendants allege and show that the so called contract provision was not an attempt on the part of petitioner to regulate fares or to contract with reference to fares to be charged within its municipal limits, but was an undertaking on the part of petitioner to fi

fares to be charged for passenger service in and through other municipalities and wholly without its territorial limits. As heretofore alleged and shown the College Park line is an interurban line and runs nearly entirely in and through municipalities other than petitioner; defendants allege that the State of Georgia, neither
202 through its legislature nor through its constitution or otherwise had conferred upon petitioner any power or authority to regulate or contract with reference to fares or rates of fares to be charged by an interurban or street railway company for travel outside of the territorial limits of petitioner; that petitioner and said municipality does not and has never possessed such power and that no such authority had ever been conferred upon it, and for this reason the so called contract provision is ultra vires and void and beyond the power or authority of petitioner to make.

35. Defendants further say that the constitution of the State of Georgia as contained in section 6464 expressly prohibits the abridgement of the police power and among other things provides—"The exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well being of the State."

Defendants allege that said provision is a constitutional inhibition against petitioner making rate or fare contracts, for as heretofore alleged the fixing or contracting with reference to rates or fares is a governmental or police power and the so called contract provision violates said constitutional provision and is, therefore, illegal, unconstitutional and void and cannot be enforced as a legal valid or binding contract provision.

36. Defendants say that it does not serve a public purpose for a municipality to fix rates or fares to and from other municipalities, such fixing of rates or fares is not germane to the public purpose for which petitioner was created and for which petitioner exists. The fixing of interurban rates or fares is a legislative and not a municipal function, the fixing of fares by a municipality upon any part
203 of an interurban line without the territorial limits of such municipality is a legislative and not a municipal function, and such power or authority must be exercised for the general well being of the State and the interest of the public and not in the interest of any particular municipality. By the so called contract provision petitioner does not undertake to regulate or make a contract with reference to the rate of fare to be charged within its municipal limits, but undertakes to contract with reference to fares to be charged on said College Park line running through the municipality of Atlanta, Oakland City, East Point and the public thoroughfares of Fulton county. Defendants allege and show that it is against the public policy of this State and the general well being of this State for any municipality to fix rates, fares or to make rate contracts having extra municipal effect and that for this reason said so called contract provision is illegal and invalid. Defendants further show that

to permit the operation or to give effect or force to said so called contract provision would cause inequality and conflict between different municipalities and would cause discrimination not only in conflict with and contrary to public policy of this State but also in conflict and in contravention of the provision of the constitution of this State as contained in section 6464 of the code of the State of Ga., providing that the exercise of the police power of this State shall never be abridged, nor so constructed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State.

Defendants say that the so called contract provision heretofore referred to is illegal, void and unconstitutional and in conflict with said constitutional provision.

37. Defendants say that the so called contract provision
204 does not undertake to fix the fares to be charged from Atlanta to College Park, but only undertakes to fix the fare to be charged "from the southern limits of said city of College Park to some central point in the city of Atlanta." For this reason defendants say that there is not even any so called contract provision which prevents defendants from charging 7 cents fare from the city of Atlanta to College Park. Defendants further say that said so called contract provision if given any force and effect as a contract being a contract with reference to the abridging of the exercise of the police power must be literally construed. Defendants say that said contract does not provide that a 5 cents fare shall be charged from College Park to the city of Atlanta, but merely from a designated point to wit, the southern limits of said city. Defendants say that there is a difference in the feasibility of collecting different fares on said line from Atlanta to College Park than from College Park to Atlanta and a difference in the feasibility of collecting fares from the southern limits of College Park than from other points in College Park coming into the city of Atlanta. In going from Atlanta to College Park defendants charge seven cents for all intermediate points between Atlanta and College Park. Defendant's method of taking up fares is on boarding the cars on pay as you enter cars and on non pay as you enter cars soon after the passengers have boarded the car. Great fraud can be perpetuated upon defendants by passengers on said line when defendants' agents undertake to collect fares by merely claiming that they are going to ride the whole length of the line and not disembark at some intermediate point, thus making the conductor collect a five cents fare instead of the legal rate of fare to be charged, 7 cents. Defendants show that even if the so called contract provision is given full force or effect it can not apply to
205 passenger service from Atlanta to College Park. Defendants also show that there is a distinction between the collecting of fares from the line, and the collecting of fares after the car has left said terminus and is on its journey to Atlanta.

For all passengers who board the car of defendant- after the northern limit of College Park has been passed, there is no contention, but

what defendants have the right to charge such passenger 7 cents. Defendants show that there is no contract provision with reference to what fares should be charged from any part of College Park except from the southern limits of said town. Defendants show that there is no contract provision which provided that passengers boarding defendenats' cars at other points in College Park should not pay the same fare as passengers at intermediate points between the northern limits of College Park and the city of Atlanta, and that if said so called contract provision is to be given force and effect it merely relates to passengers from the southern limits of said town, and not from any points within said town. Since the execution of the so called contract provision the limits of petitioner have been extended 780 feet further north. Said so called contract provision cannot be held to apply to said added territory.

38. Defendants say that said so called contract provision is indefinite with reference to the parties for whom petitioner claims or may claim said provision was entered into or executed, and because of this indefiniteness said provision is incapable of enforcement or performance. As heretofore shown said so called contract provision is not with reference to travel within the corporate limits of petitioner. Said provision furthermore does not purport to be made or entered into for the benefit of any particular person or persons or for
206 the benefit of citizens or residents of petitioner; it does not purport to have been made for the residents of petitioner at the time of its execution; it does not purport to have been made for the residents or citizens of petitioner at the present time.

Defendants say that petitioner even if it had the right to enter into contracts for its citizens with reference to rates of fares, defendants deny that any power or authority was conferred upon petitioner to enter into so called contract provision for the public generally, and because of such indefiniteness the said provision cannot be held to be a contract. At the time of the execution of the said so called contract provision College Park was by the 1900 census a municipality of 517 inhabitants. The 1920 census gave it a population of 3,662 inhabitants. As heretofore shown said contract does not purport to have been made for the inhabitants of petitioner at the time the provision was executed or for its inhabitants at the present time. Since the execution of the so called contract provision a street or suburban street railway company, other than defendants, has built a street railway, from College Park to Fairburn, a distance of approximately ten miles. Said line is divided into four zones, each zone being 2½ miles in length and passengers riding upon said line are charged 7 cents per passenger for riding through each of said zones or any part thereof. Persons and people living at Fairburn or intermediate points between Fairburn and College Park are brought on said interurban line to College Park and claim the right, because of said so-called contract provision, to ride over defendant's line from College Park to Atlanta, a distance of 8.482 miles for 5 cents; and in addition to this, claim a right to demand and receive transfers entitling them

to ride over any of *of* the other lines of defendant operated
207 in the city of Atlanta or adjacent or surrounding munici-
palities in and through which defendant's lines run. De-
fendants show that this is an entirely changed condition since the
time of the execution of said so called contract provision; that the
said so-called contract provision is so indefinite with reference to the
parties for which it was made that it cannot be enforced as a valid
contract for petitioner had no right to contract for the benefit of
parties living in different counties and in other and different localities
from petitioner's territorial limits.

39. Defendants show and allege that said so-called contract provi-
ion is indefinite as to the time it is to run, and said provision contains
no definite or fixed time during which a fare of 5 cents is to be
charged and because of said indefiniteness said so-called contract pro-
vision is revokable on notice, and as shown by Exhibit "E" attached
to the petition defendants have served notice on petitioner terminat-
ing said contract on the 20th day of October, 1920, and said so-called
contract if it ever had any force and effect is now terminated.

40. Defendants further allege that provisions or contracts with
reference to rates or fare being with reference to a legislative or
police power, even when expressly permitted, must be for a definite
term not grossly unreasonable and that where the provisions as to
rates are indefinite it is revokable on notice under changed conditions.
Defendants say that there have been numberless changed conditions
as heretofore set out, in this answer and as hereinafter detailed. De-
fendants say that the costs of material entering into the upkeep of
said line, the costs of labor and the furnishing of the service to the
passengers has greatly increased and changed since said contract was
entered into. Defendants say that the railroad commission of
208 the State of Georgia in its order of September 22, 1920 ex-
pressly stated and held: "The five cent fares now in effect on
the Main Decatur and College Park lines, contracted for under vastly
different conditions than now exist, are not fairly compensatory, and
as to the patrons of the company on other routes, and on intermediate
territory on these routes, are discriminatory." Defendants say that
this is a holding and finding of the commission itself that there has
been changed conditions vastly different from those existing at the
time of the entering into of said so-called contract provision. De-
fendants further show that not only have there been such changed
conditions but that the railroad commission of the State of Georgia
claims that it has the right to fix service on said line and in its said
order of September 22, 1920, ordered and declared that defendant
must increase its service on said College Park line and that on said
College Park line defendant shall operate trailers on all schedules
during rush hours. Defendants say that this order of the commis-
sion, increasing the service on said College Park line, in and of itself
is a changed condition and all of said changed conditions authorize
the cancellation of said so-called contract provisions and as shown
— Exhibit "E" attached to said petition said contract is no longer en-
forcible, but should be held to be revoked and terminated.

41. Defendants further allege that the so-called contract provis-
n is with reference to a public duty placed upon defendants as a
uasi public corporation, but for defendants to continue to carry out
id provision and charge 5 cents hampers defendants in the dis-
harge of their duties to the public. Defendants owe a duty to serve
e public equally and without discrimination. On intermediate
oints between College Park and Atlanta, on the College Park line, a
fare of 7 cents is charged, said passengers securing less service
00 than that afforded to what is called the College Park traffic.
Defendants say that to continue said so-called contract provis-
n, indefinite in time, in force at the present time would be an inter-
erence and an infringement of the public duty which defendants
re to their other patrons; defendants cannot be forced to operate
eir property for the public at noncompensatory rates, the charge of
cents to College Park traffic is confiscatory and not compensatory,
fact, and as held by the railroad commission of the State of Ga.,
at for defendants to continue said "so-called contract provision" in
rce and effect, would place a large burden upon other patrons of
efendants and for these reasons defendants were justified in termi-
ating said so-called contract provision.

42. Defendants further show and allege that it was and is beyond
e legal and constitutional power of defendants to make a binding
ntract with reference to fares, such as the so-called contract pro-
ision, and that said provision was ultra vires of any power or au-
ority of defendants to enter into same and therefore void. De-
ndants are quasi public corporations and cannot legally make or
ter into any contracts or agreements contrary to public policy or
ntract or agreement which interfere with or in any way impair its
ties as such quasi public corporations or effect its duties towards
her individuals or municipalities or other patrons of its line; or
se a difference with reference to its public duties and to its con-
ct obligation. Defendants owe public duties to other munici-
lities and to other patrons of its line in conflict with said "so-
lled contract provision." It is ultra vires of defendant's power to
ke a contract with one municipality to haul passengers from it
and through other municipalities at a different rate of fares than
is or may be charged for passenger service in said other mu-
00 nicipalities; all such contract or contract provisions would be
against the public policy of this State and are ultra vires.
efendants further say that section 6447 of the constitution of the
ate of Georgia prohibits and forbids the defendants from making
y contract which would directly or indirectly give a rebate or
nus in favor of any particular individual, any particular locality
any particular municipality. That to carry out the provisions of
id so-called contract would be giving to petitioner a rebate, a bonus
d a discrimination and for said reasons said so-called contract pro-
ion is unconstitutional and void as being in violation of section
67 and in violation of sec. 6463 prohibiting unjust discrimination.

43. Defendants show and allege that on the 22nd day of Septem-
, 1920, the railroad commission of the State of Georgia fixed the

rates of fares for all passengers riding on College Park line wit
the city of Atlanta at 7 cents, for all passengers riding on s
line within the limits of Oakland City 7 cents, for all passeng
riding on said line within the limits of East Point 7 cents, for
passengers riding on said line from Atlanta to the northern li
of College Park and all intermediate points at 7 cents. Defend
show that this action of the commission was the action of the S
of Georgia and has the force and effect of a legislative statute
acted by the legislature and approved by the governor of this S
Defendants say that this action of the State nullifies all rates
fare to be charged on said College Park line in conflict with sa
cents rate of fare as fixed by the commission and that said rat
fares as fixed by the commission nullifies any rate of fare on
College Park line outside of the municipal limits of petitioner.
fendants say that until the commission made its action
211 1918, and its further action fixing rates of fare on said
lege Park line at 6 cents and the action of September
1920, fixing the rate of fare on said College Park line at 7 cents
State of Georgia had not taken jurisdiction over said College P
line and that the fare over all lines of the defendant had been
1918 five cents. Defendants say that at the time of the actio
the Supreme Court of Georgia in the case of Georgia Railw
Power Company v. Railroad Commission of Georgia, the State
not taken such jurisdiction over any part of said College Park
or fixed a rate of fare on said line different from that set out or
vided in said so-called contract provision, but that said action o
State was taken after the rendition of the decision by the Supr
Court of Ga. in said case. Since the rendition of said decision
State has acted as heretofore set out. Defendants say that the S
action is in conflict with said so-called contract provision, at
so far as the same effects the College Park line outside of the
ritorial limits of petitioner and defendants say and allege that
action of the State itself automatically suspends and sets aside
so-called contract provision in so far as the same applied to
College Park line outside of the limits of petitioner.

Defendants say that the rendition of the decision of the Supr
Court does not act as an estoppel for the reason that petitioner
not a party to said suit and for the further reason that in said
the Supreme Court expressly recognized that if the State exer
its police power then the so-called contract provision would be
and void.

44. Defendants say and allege that the railroad commission o
State of Ga. is given no right, power or authority to itself de
or set aside contracts or so-called contract provisions
212 reference to fares. That if it be held that the action o
commission of and in itself in fixing the rates on
College Park line did not render said so-called contract prov
null and void, unconstitutional and unenforcible that then
court as a court of equity must exercise its jurisdiction and
hold that said contract is illegal, void, discriminatory and un

tutional and enjoin the enforcement of said so-called contract pro-sion and defendants allege and claim that a public duty rests upon not to carry out said illegal, void and unconstitutional provision.

45. Defendants say that to charge a passenger 7 cents to ride on d College Park line within the corporate limits of Atlanta or to d from Atlanta and Oakland City or to and from Atlanta and st Point or to and from Atlanta and the northern limits of Col-ge Park and all intermediate points and then only charge 5 cents r a ride from College Park to Atlanta and issue transfers to such ssengers paying 5 cents giving them the privilege to ride on all her lines of defendants in the city of Atlanta or running in ter-ory adjacent to Atlanta when a fare of 7 cents is charged on such her lines is discriminatory. Defendants say that to charge 5 cents what is known as College Park traffic, places an additional burden on other municipalities and localities and upon other patrons of fendants, for such other localities or patrons may be compelled to nd a greater increase than would otherwise be required if the e of fare as to the College Park traffic be increased with reference the facilities afforded such traffic. Defendants say that the State Ga., through its railroad commission has fixed the rate of fare said College Park line, except with reference to what is known as College Park traffic at 7 cents and defendants say that such fixing of fare on said College Park line renders the rate in said so-called contract provision, discriminatory, illegal, un-nstitutional and void and that said so-called contract provision is ecially illegal and unconstitutional with reference to all traffic said line outside of and beyond the municipal limits of College rk. Defendants say that the public policy of the State of Ga., enunciated by the acts of the legislature of this State and as set t and expressed in its constitutional provision declare and make discriminatory fare contracts, rebates or bonuses directly or in-ectly granted, which have arisen by virtue of any device or con-ct entered into since the adoption of the constitution of 1877 d and defendants say that said so called contract provision is now conflict with said public policy of the State of Ga., and is for s reason null and void.

46. Defendants say that to give force and effect to the said action the commission fixing a 7 cents fare on said College Park line d to give force and effect to said so-called contract provision would to produce on the same line and over the same section of the e two entirely separate and distinct rates of fare, the smaller fare ng charged for the longer haul and the greater service and the ater fare being charged for the lesser service and the shorter ul, and that to carry out the enforcement of such two rates of fare uld be contrary and detrimental to the public interest, peace and nquillity and in conflict with the general well being of the State d an infringement of the equal rights of individuals.

47. Defendants say that if said so-called contract provision was id and enforcible at the time it was made and was then valid

and enforcible with reference to the entire College Park line beyo
its corporate limits; still said so-called contract provision must n
yield to the State's action in fixing the rates of fare for
214 points from the northern limits of College Park over s
College Park line at a 7 cents fare and that all passeng
now hauled over said part of College Park line must be charg
at the rate of 7 cents.

48. Defendants further show that the said so-called contract p
vision is illegal void and unconstitutional because the same is
conflict with constitutional provisions of the State of Ga., prohibiti
discrimination of any kind or *charter* with reference to service
defendants. Defendants say that such constitutional provision ma
it unlawful and unconstitutional for defendants to collect less
travel over the entire College Park line the longest haul that
charged for intermediate points between Atlanta and College Pa
Defendants say that the constitution of the State of Ga., as set ou
section 6463 of the code prohibits unjust discrimination by railro
companies; that said State constitutional provision as contained
section 6464 prohibits corporations from conducting their busine
in such manner as to infringe the equal rights of individuals, or t
general well being of the State, and section 6467 prohibits defen
ants from giving or paying any rebate or bonus in the nature there
directly or indirectly, and defendants say each of said provisions
said constitution renders said so-called contract provision illegal a
void, as now being in conflict therewith.

Defendants further say that in carrying out said constitution
provisions the legislature of the State of Ga. has passed and enac
laws declaring discrimination of any kind or character illegal a
void and that said so-called contract provision is not in conflict w
said laws as enacted by the general assembly of this State and i
this reason said so-called contract provision is now illegal and void.

49. Defendants say that the railroad commission of th
215 State of Ga., in its order of September 22nd, 1920, expres
held: That the so called contract is now discriminatory, s
commission further held that it had no power over such discrimin
tory contracts and this court must assume jurisdiction and decla
said contract illegal, unconstitutional and void as being discrimi
tory.

50. Defendants say that the railroad commission of the State
Ga. claims and it had assumed jurisdiction over defendants w
reference to the fixing and regulation of service on the College Pa
line and with reference to College Park traffic. Defendants say th
the commission has for some time regulated the number of cars a
required this defendant to put on additional service to that furnish
by defendants at the time of entering into the so called contract p
vision heretofore set out. Defendants say that at the time of en
ing into said so called contract provision the service furnished
defendants to petitioner amount- to wit: — six cars per hour. Und
the orders of the railroad commission of Ga. and under its sup

ision the present service on said line amounts to twelve cars per our. Defendants further say that in the commission's order of eptember 22, 1920, the said commission's order provides that de- endants, as early as practicable and within 6 months from Oct. 1, 920, should operate trailers on its College Park route on each sched- le now operating during the morning and afternoon rush hours as ow established to wit, during the hours of 6.30 to 9.00 (approxi- nately) in the morning and 4.45 to 7.15 (approximately) in the fternoon. Defendants say that the commission itself in its said rder of September 22, 1920, states that to perform the present ervice on said College Park line under a 5 cent fare is not fairly ompensatory. Defendants say that said action of the commission in ordering defendants to increase their service, if the com- 16 mission has power to make such order, is an order by the State of Georgia and is an order, which together with its other rders on said line makes the additional service rendered on said line onfiscatory and that if the law gives such power to the commission nd such orders are valid, the said contract provision for a 5 cent are with said increased service will amount to confiscation of de- endants' property without compensation, without due process of law nd would deprive the defendants of the equal protection of the law contravention of the 14th amendment of the constitution of the nited States found in Georgia Code, Section 6700, and contrary to e constitution of the State of Ga. as found in section- 6358 and 359. Defendants say that said action of the commission requiring ncreased service on said College Park line from time to time and its id order of September 22, 1920, are not acts or contracts on the rt of these defendants, but were acts on the part of the State of a., and that said action sets aside and abrogates the so-called con- act provision, because said orders make said contract provision onfiscatory.

Defendants say that complying with said orders of the commission as made the costs per passenger with reference to said College Park affic amount to, to wit, at least the cost of 13.957 cents per passenger ithout regard to any return on the value of the property of de- ndants actually used in the public service. Defendants say that ther the railroad commission of the State of Ga., has no power or uthority to increase the service which increase of service will require n increase in excess of that procured by the so-called contract pro- ision or the increase of said service abrogates and sets aside said o-called contract provision because the action of the State through s legislative regulatory body as to service has made said so-called ntract provision confiscatory, illegal and unconstitutional.

17 51. Defendants further say that petitioner is estopped from making the contention that the railroad commission of the ate of Ga. no longer has any power or authority to fix rates of fare r College Park traffic because of any so-called contract provision. efendant- say that under the law of the State of Ga. and constitution the United States and the State of Ga., as just heretofore set out, e railroad commission of the State of Ga., cannot have authority

to order changes or additions to defendants' service, while it has no power or authority to increase the fare to a point which will pay for the additions and changes in service and provide a reasonable return upon the value of the property used in performing said service, and that if petitioner invokes the jurisdiction, power or authority of the commission to require the defendant- to perform such service then petitioner is estopped from denying the right, power and authority of the commission to fix legal, valid and compensatory rates for such service.

Defendants say that on the 5th day of February, 1917, petitioner by formal action of its mayor and general council requested the railroad commission of the State of Ga. to regulate service on said College Park line and with reference to College Park traffic, a copy of which resolution and action of petitioner is hereto set out marked Exhibit "B" and made a part of this answer.

Defendants say that said action of the petitioner estops petitioner from claiming the benefit of any so called contract provision, fixing the rate of fares, for petitioner has requested the commission of the State of Georgia to take jurisdiction of the regulation of defendants with reference to College Park service, and that such jurisdiction cannot be invoked by petitioner and at the same time deny the power and authority of the commission to increase the rates of fare

to the extent necessary to yield the required expense for performing such service and a reasonable average return upon
218 the value of the property of defendants actually used in performing such service, for *it* petitioner undertook to get the benefits of the jurisdiction of the railroad commission with reference to the regulation of service which jurisdiction it asserts it would have the action of petitioner which would cause a confiscation of defendants' property in violation and in contravention of the constitution of the State of Ga., as set out in section 6358 of the code and the 14th amendment of the constitution of the United States as set out in section 6700. Defendants further say that the original petition of plaintiff, as heretofore set out in this answer, invoked, prayed and asserted the jurisdiction of the commission with reference to issuing transfers to College Park traffic and such action on the part of the petitioner estops it from denying the right of the railroad commission to fix fares with reference to said College Park traffic which will not be confiscatory as has been declared to be a fact by the commission itself in its order of Sept. 22, 1920.

52. It is claimed by petitioner and by the railroad commission of the State of Georgia that by virtue of the acts of 1907, page 73 et seq. said commission is given jurisdiction over defendants with reference to service and equipment of said company used in connection with the College Park traffic and that said commission can require these defendants by its orders to make such changes and additions to such service as said commission requires and it is contended by petitioner that said commission though given this power to regulate service has been given no power or authority to increase the rates of fare with reference to said College Park service to the extent

ecessary to yield even the required expense of such service. Defendants say that if the said act of the legislature is given
19 such construction that said act is now confiscatory, unconstitutional and void. Defendants say that complying with he orders of the railroad commission with reference to service, the xpense of service per passenger with reference to College Park affic is at least 13.957 cents. Defendants further say that the ommission itself in its order of September 22, 1920, has itself exressly held and stated that under the so-called contract provisions he service with reference to said College Park traffic is not fairly ompensatory and such ruling was made with reference to the then xisting service required by the commission without consideration of he extra service required by said order to be performed by the deendants within 6 months after Oct. 1, 1920. Defendants say that nder the present state of facts that any legislative act which deives the commission of the power to increase the rate of fare but rants it right, power and authority to increase service to such an xtent that such increased service will require an income in excess f that produced by any rate of fares protected by said act would ake the said act of the legislature confiscatory, illegal and void and n contravention of the constitution of the State of Ga., as set out in ection 6358 and 6359, and the 14th amendment of the constitution f the United States as set out in sec. 6700 of the Georgia Code of 910, providing for the equal protection of the law and providing hat no person shall be deprived of life, liberty or property without ue process of law, and defendants say that either said act of 1907 void for the reason aforesaid, or the exception to said act proiding "nothing therein shall be construed to impair any valid, substing contract now in existence between any municipality and any uch company, and provided this act shall not operate as a repeal of any existing municipal ordinance," is illegal, void and un-
20 constitutional, for the reasons just stated, and defendants attack said exception.

53. Defendants further say that if the so-called contract provision held to come within the exception of the act of 1907, page 73 et eq. which exception provides: "That nothing herein shall be conrued to impair any valid, subsisting contract now in existence beween any municipality and any such company, and provided that his act shall not operate as a repeal of any existing municipal rdinance," then said exception of said act is in*a*valid and uncondtutional, for the additional reasons hereinafter set out. Defendnts say that said act purports and does give to the commission urisdiction over rate contracts between street railway companies and rivate persons and over all contracts between municipalities and treet railway companies except those made prior to 1907. Said act ives the commission jurisdiction over all rate contracts contained so-called consent franchise contracts between a municipality and street railway company entered into subsequently to 1907. Dendants say that there is no legal, just or distinguishing classificaon between so-called franchise contracts made prior to 1907 con-

taining rate provisions for service to private patrons claimed to be excepted from the commission's jurisdiction and contracts entered into between the parties themselves for similar service, and to place contracts entered into by parties themselves for similar service under the commission's jurisdiction and not to place contracts entered into by municipalities for such patrons under the commission's jurisdiction is not a legal classification but creates discrimination. Defendants further say that there is no legal distinction and separate classification between so-called contracts made prior to 1907 and those made subsequent thereto. Defendants say that private con-
221 tracts entered into between private parties and defendants or with a street railway company with reference to service are held subject to the commission's jurisdiction and that to hold them subject to the commission's jurisdiction and to exclude from the commission's jurisdiction contracts made by a municipality for the benefit of private patrons is discriminatory and unconstitutional and makes such excepting clause contravene the constitution of the State of Ga. as contained in section- 6358 and 6359 and the 14th amendment of the constitution of the United States as contained in section 6700 insuring to parties due process of law and the equal protection of the law.

Defendants further say that the acts of 1907 page 73 et seq. conferred power upon the railroad commission of Ga. to fix rates of fare and regulate rates in all cases except that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and provided that this act shall not operate as a repeal of any existing municipal ordinance. Defendants say that by virtue of such power and authority the railroad commission has acted and fixed rates of fares to be charged by defendants as heretofore shown at 7 cents per passenger. Defendants say that if said exception to said act was a recognition of a 5 cents rate of fare with reference to College Park traffic that that said legislative act itself or said exception contained in the act is now void and unconstitutional because the same is discriminatory and violates the inhibitions of the constitution of the State of Ga., forbidding discrimination as contained in section- 6463 and 6465 forbidding a corporation to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State, and section 6467 forbidding rebates and is also a
222 violation of section 6469 which is a mandate upon the general assembly of the State of Georgia to carry out the provisions against discrimination and any action or exception to an act which tended to produce or create discrimination would become unconstitutional whenever said discrimination came into existence.

54. Defendants show to the court the following facts and allege if the court should hold that the so called contract provision is a valid binding contract and that defendant cannot charge more than 5 cents per passenger for what is known as the College Park traffic defendants say that the performance of such contract would require defendants to perform the service at less than cost of such

ervice and defendants would not receive any return whatever upon the value of their property employed in carrying out such service. Defendants say that the costs of hauling passengers on the College Park line from College Park to Atlanta amounts at least to 13.957 ents and hauling the College Park passengers for any average istance on said College Park line costs much over the amount of 5 cents per passenger for any reasonable distance, that the cost of auling College Park passengers from College Park to Atlanta and iving them transfers would increase the service costs to something ver 13.957 cents per passenger.

Defendants say that constitutionally and legally they cannot be equired to continue to perform said confiscatory contract. That efendants are public utility corporation incorporated for the purpose f serving the public and that the future fulfilling of said contract rovision, if it is held to be legal and binding would interfere with efendants' service to its other patrons and that said contract would n a large measure disable the corporation from performing its legal duties to the public. If it be held by the court that defend-
23 ants cannot terminate said contract provision, without at the same time giving up the right to operate its cars within the unicipal limit of College Park and giving up any right they may ave under the other provisions of said so called franchise contract, efendants say that they hereby surrender all rights they may have nder and by virtue of said so called contract franchise and ask the ourt to declare all their rights under and by virtue of said contract ull and void and to relieve the defendants of operating said line ithin the limits of College Park and to permit defendants to take p their said tracks within the corporate limits of College Park. Defendants say that constitutionally they cannot be required to perate their said property under and by virtue of any so called ontract provision within the limits of College Park at a loss and is impossible to continue to operate it at 5 cents save at a continuing ss and defendants say that under the constitution of the State of a., as contained in section 6359 and the constitution of the United tates as contained in section 6700 of the Ga. Code defendants would e deprived of their property without due process of law, if they ould be required to operate their cars within the corporate limits College Park under the so called franchise contract. If the court ould hold that said so called contract provision limiting the fare 5 cents must be performed and is binding unless defendants rogate the entire so called franchise contract and terminate the tire contract defendants hereby offer to surrender the entire con-act and cease to operate cars in or within petitioner's territorial mits.

55. Defendants say that on account of the facts heretofore set out e so called contract provision is now unconstitutional and in-quitable and that the same should not be enforced by a court of equity. Defendants say that said so called contract provision,
24 because of the facts heretofore set out, should be declared terminated and no longer enforcible and that this court ould itself declare said so called contract provision at an end.

Wherefore, defendants pray:

(*a*) That said so called contract provision be declared as not forcible as a valid and binding contract between the parties.

(*b*) That said so called contract provision be declared illeg void and unconstitutional.

(*c*) Said so called contract provision be now declared termina and of no force and effect.

(*d*) That plaintiffs and all other parties be restrained and joined from in any way or manner enforcing or undertaking to force said so called contract provision against defendants.

(*e*) That plaintiffs and all other parties be restrained and joined from interfering with defendants fixing and establishi reasonable, just and non-discriminatory fares or rates of fare w reference to College Park traffic and that petitioner and all oth parties be restrained and enjoined from in any manner or in a way interfering with defendants enforcing and collecting su reasonable, just and non-discriminatory fares as are fixed by fendants.

(*f*) Defendants pray for such other, further and additional rel as to the court may seem just and proper.

ROSSER, SLATON, PHILLIPS &
HOPKINS,
J. P. WEBSTER,
COLQUITT AND CONYERS,
Attys. for Defts.

GEORGIA,
Fulton County:

Personally appeared before the undersigned P. S. Ar
225 wright, who on oath says that he is president of the Geor Railway & Power Company and that the facts stated in t foregoing answer and cross bill are true.

P. S. ARKWRIGHT.

Sworn to and subscribed before me, this the 29th day of Oct., 192
[SEAL.] L. D. HINTON,
N. P. Fulton County, Ga. State at Large.

GEORGIA,
Fulton County:

Personally appeared before the undersigned W. H. Wright, wh on oath says that he is secretary of the Ga. Ry. & Power Co., an that the facts stated in the foregoing answer and cross bill are tru

W. H. WRIGHT.

Sworn to and subscribed before me, this Oct. 29th, 1920.
L. D. HINTON,
N. P. Fulton County, Ga., State at Large.

Exhibit "A."

Effective October 1st, 1920, applicant is hereby authorized to charge and collect as its maximum passenger fare, the sum of seven (7) cents per passenger, where a six (6) cents fare is now charged for one continuous ride over and on its city and suburban lines of railway, or any zone thereof as now established, except such fares on the Main Decatur and College Park routes as are fixed by contracts between the company and the cities of Decatur and College Park held by the Supreme Court of Ga. to be valid contracts.

That as early as practicable, and if the necessary equipment can be secured within 6 months from October 1st, 1920, applicant
226 shall place in service on its city and suburban street car routes, during the morning and afternoon rush hour periods as now established, additional seating capacity equal to twenty per cent of the seating capacity now provided, except as to the Main Decatur and the College Park routes, on which two named routes, trailers shall be operated on each schedule now operated during the above mentioned rush hours.

Applicant is directed to report to the commission in writing not later than November 15th next, what steps it has taken to carry into effect the provisions of this requirement.

The five cent fares now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes, and on intermediate territory of these routes, are discriminatory. This commission is without authority to increase them.

Exhibit "B."

College Park, Ga.

Council Chamber, Feb. 5th, 1917.

Be it resolved by the Mayor and Council of the City of College Park as follows:

1. That this body is of the opinion that the present passenger service, during rush hours (afternoon particularly), of the Georgia Railway & Power Company, is entirely inadequate.

2. That this body respectfully requests the railroad commission of the State of Georgia to investigate the traffic conditions, and remedy the same in such way and manner as to them may seem just and right, both to the company and to the public.

227 3. That it is the opinion of this body that relief cannot possibly be given without the use of what is known as "trailers"; such trailers to be attached to regular cars and operated by the same crew as operate regular cars.

4. That looking to the aforesaid solution of the matter, this body hereby represents to the said commission that it has heretofore tentatively made an arrangement whereby such "trains" can be conveniently reversed at the terminus in College Park; and the use of the loop in the city of Atlanta, through Alabama Street (which this body is informed was permitted in order to — the running of such trailers) will enable the company to install and conveniently operate such service at a very slight increase of expense.

5. That these resolutions be spread upon the minutes of this body; and a copy of the same be transmitted to the said commission for their consideration.

COLLEGE PARK,
Fulton County, Ga:

I, as acting clerk of council of the mayor and council of the city of College Park, hereby certify that the above and foregoing is a true and correct copy of resolutions passed by said mayor and council at its regular meeting on the 5th day of February, 1917.

(Signed) R. L. PROCTOR,
Acting Clerk.

Filed in office this the 30th day of Oct., 1920.
T. C. MILLER,
Deputy Clerk.

(*Amended Petition.*)

GEORGIA,
Fulton County:

And now comes the plaintiff in the above stated case, and by leave of the court amends his petition in the above stated case and alleges as follows:

228 47. That Exhibit "F" hereto attached as a part hereof is a valid rule of the railroad commission of Georgia.

48. That Exhibit "G" hereto attached as a part hereof is a valid rule of the railroad commission of Ga.

49. That exhibit "H" hereto attached as a part hereof is a valid rule of the railroad commission of Ga.

50. That Exhibit "I" hereto attached as a part hereof is a valid rule of the railroad commission of Ga.

51. That the said defendants and each of them are subject to the above stated rules of the railroad commission, and were likewise subject to said rules and each of them on the 5th day of Oct., 1920, and on the date of the filing of this bill, and on the 30th day of Oct., 1920.

52. That conduct on the part of the said Power Company and said Electric Company, in line with their threat set forth in said written notice, exhibit "E", will be an absolute violation of the above named rules of the railroad commission and each of them.

Wherefore, petitioner prays as follows:

9. That the said Electric Company and the said Power Company, be restrained and enjoined from violating any of the rules, orders or regulations attached to this amendment and attached to the original bill.

10. That the said Electric Company and the said Power Company be required to perform and carry out each of the rules, orders or regulations of the Railroad Commission attached to this amendment and attached to the original bill.

ALFRED C. BROOM,
Pl'ff's Atty.

GEORGIA,
Fulton County:

In person before the undersigned authority came S. A. Johnson, Mayor of the city of College Park, with full authority to make this affidavit, and knowing the facts, who being sworn, deposes 229 and says that the facts set forth in the above and foregoing amendment are true.

This the 2nd day of Nov. 1920.

S. A. JOHNSON.

Sworn to and subscribed before me, this 2nd day of Nov., 1920.
H. L. CULBERSON,
N. P. Fulton County, Ga.

Read and considered. Let the above and foregoing amendment be filed, and the same is hereby allowed, subject to objection. This 4th day of Nov., 1920.

J. T. PENDLETON,
Judge S. C. A. C.

EXHIBIT "F."

Rule 1.

The word "Company" as used and intended by any and all of the rules and regulations of the commission, shall be deemed and taken to mean and include all corporations, companies, firms and persons that may be engaged, or that may hereafter become engaged, in performing for hire any service to the public that is now, or that shall hereafter be, subject by law to the jurisdiction or control of the commission.

EXHIBIT "G."

Rule 3.

All of the rates prescribed by the commission are maximum rat which shall not be exceeded by any company.

Any company may charge less than the prescribed maximu rate, provided that, if a less rate be charged to one person, such co pany shall, for a like service, charge the same lessened rate to persons, except as may be hereafter provided, and if a
230 company shall reduce any of its rates to or from one agen or station, it shall, except in cases where otherwise specia provided by the commission, make a reduction of the same p centage to and from all other stations on its line, to the end th no unjust discrimination be made in favor of, nor against, a person, persons or locality.

EXHIBIT "H."

Rule 4.

Each company shall keep conspicuously posted at all of its s tions, offices and agencies in Georgia, a copy of the schedules rates prescribed by the commission for the government of such co pany.

When any change is made in such schedule, either by such co pany voluntarily, or pursuant to an order of the commission, su company shall immediately furnish a copy of said change to t office of the commission, and shall also post copies thereof in t same manner as above specified, as notice to the public that s change has been made.

No advance in any rate, whether it be a maximum rate, or oth wise shall be made without the consent of this commission f being obtained nor shall such advance become effective until t days thereafter, and no reduction in any rate shall become effect until three days after notice had been given, as above required.

EXHIBIT "I."

Rule 7.

All rates effective in this State, except in cases otherwise specifi shall apply in either direction, over the same line, between the sa points.

Filed in office this the 4th day of November, 1920.

W. L. VENABLE,
D. Cl

231 Before the Railroad Commission of Georgia.

File No. 13946.

In re Application of GEORGIA RAILWAY AND POWER COMPANY for Increased Fares on Its Street Railway Lines, for Increased Rates for Electric Current for Light, Power, and Other Purposes.

Decided August 14th, 1918.

Order and Opinion of the Railroad Commission.

231½ Chas. Murphy Candler, Chairman;
George Hillyer, Chairman, Vice-Chairman;
Paul B. Trammell,
James A. Perry,
John T. Boifeuillet,
Commissioners.
J. Prince Webster, Rate Expert.
Albert Collier, Secretary.
James K. Hines, Special Attorney.

232 Railroad Commission of Georgia.

Atlanta.

August 14, 1918.

File No. 13946.

In re Application of THE GEORGIA RAILWAY AND POWER COMPANY for Increase in Charges to the Public for the Various Classes of Services Furnished.

Upon consideration of the record in the above entitled case of the facts and arguments submitted at the hearing had thereon, and of the report and opinion this date adopted by the Commission containing its findings of facts and conclusions therein with respect to the issues involved, which said report is hereby referred to and made a part hereof, it is

Ordered: That on and after September 1, 1918, and until the further order of this Commission, the following schedules of rates shall be the maximum schedules of rates to be charged by the Georgia Railway & Power Company, for the classes of services indicated:

SCHEDULE A.

Atlanta, Ga.

Residence Lighting Scale.

(Within City Limits. Monthly Basis.)

For the first 100 K. W. H. per month.....	8.88c per K. W. H.
For the next 100 K. W. H. per month.....	7.77c per K. W. H.
For the next 100 K. W. H. per month.....	6.66c per K. W. H.
For the next 200 K. W. H. per month.....	5.55c per K. W. H.
For all over 500 K. W. H. per month.....	4.44c per K. W. H.

Minimum monthly charge, $1.11.

Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE B.

Atlanta, Ga.

Commercial Lighting Scale.

(Within City Limits. Monthly Basis.)

For the first 100 K. W. H. per month.....	8.88c per K. W. H.
For the next 100 K. W. H. per month.....	7.77c per K. W. H.
For the next 100 K. W. H. per month.....	6.66c per K. W. H.
For the next 200 K. W. H. per month.....	5.55c per K. W. H.
For the next 500 K. W. H. per month.....	4.44c per K. W. H.
For all over 1,000 K. W. H. per month.....	3.33c per K. W. H.

Minimum monthly charge, $1.11.

Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

233 SCHEDULE C.

Suburban Districts Not Incorporated, Adjacent to the City of Atlanta, Ga.

Residence and Commercial Lighting Scales.

Monthly Basis.

Within ½ mile of Atlanta City Limits.

For the first 100 K. W. H. per month.....	10c per K. W. H.
For the next 100 K. W. H. per month.....	9c per K. W. H.
For the next 100 K. W. H. per month.....	8c per K. W. H.
For the next 200 K. W. H. per month.....	7c per K. W. H.
For all over 500 K. W. H. per month.....	6c per K. W. H.

Minimum monthly charge, $1.66.
Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

Beyond the ½ mile radius of Atlanta City Limits.

1c per K. W. H. higher than the Half Mile scale for the same class of service.
Minimum charge, $2.22.
Subject to a ten (10%) per cent, discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE D.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollton, Ga.

Residence and Commercial Lighting Scale.

Monthly Basis.

For the first 100 K. W. H. per month.....	10c per K. W. H.
For the next 100 K. W. H. per month.....	9c per K. W. H.
For the next 100 K. W. H. per month.....	8c per K. W. H.
For the next 200 K. W. H. per month.....	7c per K. W. H.
For all over 500 K. W. H. per month.....	6c per K. W. H.

Minimum monthly charge, $1.33.
Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE E.

Hartwell, Royston, Lavonia, Canton, Bowersville, Duluth, Ingleside Clarkston, and Stone Mountain, Ga.

Residence and Commercial Lighting Scale.

Monthly Basis.

For the first 100 K. W. H. per month	.....	11c per K. W. H.
For the next 100 K. W. H. per month	...	10c per K. W. H.
For the next 100 K. W. H. per month	.....	9c per K. W. H.
For the next 200 K. W. H. per month	.....	8c per K. W. H.
For all over 500 K. W. H. per month	.....	7c per K. W. H.

Minimum monthly charge, $1.66.

Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE F.

Whitesburg, Ga.

Residence and Commercial Lighting Scale.

Monthly Basis.

For the first 100 K. W. H. per month	.....	12c per K. W. H.
For the next 100 K. W. H. per month	.....	11c per K. W. H.
For the next 100 K. W. H. per month	.....	10c per K. W. H.
For the next 200 K. W. H. per month	.....	9c per K. W. H.
For all over 500 K. W. H. per month	.....	8c per K. W. H.

Minimum monthly charge, $1.66.

Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE G.

Atlanta, Ga.

Retail Power Scale.

(Within City Limits. Monthly Basis.)

For the first	100 K. W. H. per month.....	5.55c per K. W. H.
For the next	400 K. W. H. per month.....	4.44c per K. W. H.
For the next	500 K. W. H. per month.....	3.88c per K. W. H.
For the next	1,000 K. W. H. per month.....	3.33c per K. W. H.
For the next	3,000 K. W. H. per month.....	2.77c per K. W. H.
For all over	5,000 K. W. H. per month.....	2.22c per K. W. H.

Discount: Above rates subject to a 10% discount, if bills are paid on or before the 10th of the month.

Minimum Charge: 75c per H. P. connected, but not less than $2.00 net per month.

Contract Period, 1 year.

SCHEDULE H.

Suburban Districts, not Incorporated, Adjacent to the City Limits of Atlanta, Ga.

Retail Power Scale.

Monthly Basis.

Within ½ Mile of Atlanta City Limits.

1c per K. W. H. higher than Atlanta Retail Power scale.

Beyond ½-mile Radius of Atlanta City Limits.

2c per K. W. H. higher than Atlanta Retail Power scale.

Minimum charge, $1.00 per H. P. connected, but not less than $3.00 per month outside of city limits.

235

SCHEDULE I

Retail Power Scale.

Monthly Basis.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollton, Hartwell, Canton, Royston, Lavonia, Bowersville, Duluth, Clarkston, Stone Mountain, Ingleside and Whitesburg, Ga.

1c per K. W. H. higher than Atlanta City retail power rates; with minimum charge of $1.00 per H. P. connected, but not less than $3.00 per month.
Contract Period, 1 year.

SCHEDULE J.

Heating and Cooking Scales.

Monthly Basis.

Atlanta, Ga.

Within City Limits: 4.44c per K. W. H.
Minimum charge, $1.66 per month.
Outside City Limits: 5.55c per K. W. H.
Minimum charge, $2.22 per month.
Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE K.

Primary Hydro-Electric Rates.

Industrial: Applicability: All Territory Served by the Company.

Basis for Determining Maximum Monthly K. W. Demand.

(The actual maximum demand for any month, during the continuance of the contract shall be taken as the average rate of using electrical energy by the consumer, during any thirty (30) minute period in such month in which electrical energy is used by the customer at the highest average rate of demand. Peak demands, due to short circuits or accidents to machinery, or momentary starting of motors, shall not be counted.)

Rates.

Service Charge: $1.11 per K. W of Maximum Demand per month, plus an energy charge as follows:

For the first 10,000 K. W. H. per month..... 1.33c per K. W. H.
For the next 10,000 K. W. H. per month..... 1.11c per K. W. H.
For the next 10,000 K. W. H. per month..... 0.88c per K. W. H.
For the next 20,000 K. W. H. per month 0.66c per K. W. H.
236 For the next 50,000 K. W. H. per month 0.55c per K. W. H.
For all over 100,000 K. W. H. per month 0.44c per K. W. H.

Discount: Above rates subject to 10% discount if bills are paid on or before 10th of the month.

Minimum Monthly Charge: K. W. of Maximum Demand Charge.

Contract Period, 1 year.

SCHEDULE L.

Primary Hydro-Electric Rates.

Central Station or Municipal.

Monthly Basis.

Applicability: All Territory Served by the Company.

Basis for determining Maximum Monthly K. W. Demand—Same as Industrial Rates—Schedule K.

Rates.

Service Charge: $1.66 per K. W. of Maximum Demand per month, plus an energy charge as follows:

(Same as energy charge for Schedule K. Subject to same discounts.)

Minimum Charge: K. W. of Maximum Demand Charge.

Contract Period, 1 year.

SCHEDULE M.

Secondary or Dump Power Rate Scales.

Applicability: All Territory Served by the Company.

By secondary or dump power is meant power which the company may be able to deliver in excess of the power required, reserved, sold or supplied as primary power, and the company reserves to itself the right to shut off or discontinue, or to resume the delivery of said secondary power at its option.

(This scale does not apply to reciprocal contracts entered into with other power companies.)

Rate: .00833 cents per K. W. H.
Yearly Guarantee, $13.33 per H. P. connected.
Discount: Above rates subject to 10% discount if bills are paid on or before 10th of the month.

SCHEDULE N.

Seasonal or Rural Rate Scales.

Applicability: All Territory Served by the Company.

(This service is applicable for gins and other industrial developments operating only a part of the year.)

237 Rates.

Service charge for those months when connected $1.11 per K. W. of Maximum Demand, plus energy charge as follows:

For the first 10,000 K. W. H. per month.....	1.33c per K. W. H.
For the next 10,000 K. W. H. per month.....	1.11c per K. W. H.
For the next 10,000 K. W. H. per month.....	0.88c per K. W. H.
For the next 20,000 K. W. H. per month.....	0.66c per K. W. H.
For the next 50,000 K. W. H. per month.....	0.55c per K. W. H.
For all over 100,000 K. W. H. per month.....	0.44c per K. W. H.

Discount: Above rates subject to 10% discount if bills are paid on or before 10th of the month.
Minimum Monthly Charge: K. W. of Maximum Demand Charge.
Contract Period, 1 year.

SCHEDULE O.

Gas Rates.

Monthly Basis.

Applicability: Decatur and Surrounding Territory.

For the first 10,000 cu. ft.....	$1.25 per 1,000 cu. ft.
For the next 20,000 cu. ft.....	1.15 per 1,000 cu. ft.
For the next 20,000 cu. ft.....	1.05 per 1,000 cu. ft.
For all over 50,000 cu. ft.....	.95 per 1,000 cu. ft.

Discount: Subject to 10c. per 1,000 cu. ft. discount if bills are paid on or before 10th of the month.
Minimum Monthly Charge: $1.00 per customer meter.

Ordered further: That the Georgia Railway and Power Company file with this Commission, monthly statements showing the result of its operations—that is, receipts, disbursements, etc., in detail, showing also comparison with operations for the same month in the preceding year.

It is hereby expressly declared that the above increases are authorized upon the express condition that the same are necessary because of emergencies arising out of national conditions existing at this time, and upon the further condition that when this emergency shall have passed, the old rates shall be restored upon the orders of the Commission.

Ordered further: That the Georgia Railway & Power Company be, and the same is hereby directed, to amend its customer contracts so as to provide in a heavy black border a notice to its customers substantially in accord with the following, said notice to be shown immediately preceding the contract provisions:

238 *Special Notice.*

The rates stated in the following proposal or contract are subject to change by the Railroad Commission of Georgia, in the manner prescribed by law, at any time. In the event of such change the new rates prescribed by the Railroad Commission will apply from the date made effective, for the unexpired term of this contract.

Ordered further: That the Georgia Railway & Power Company be and the same is hereby directed to print on the back of bills rendered to its various customers the rate schedules, upon which the amount of the bill shown on the opposite side has been calculated.

Ordered further: That the Georgia Railway & Power Company be and the said company is hereby directed to print all of its rate schedules, rules and regulations under which service is to be furnished, and that a copy of such publication be posted in the office of the company at each point where it conducts a general business; and also one copy filed with the Mayor or Clerk of Council of the various cities in which the company operates, so that the public may have free and easy access to the rate schedules, rules and regulations of the company as offered to the public in the conduct of its business with the public.

Ordered further: That the scale of rates heretofore obtaining in connection with ceiling fans be and the same is hereby cancelled; in future such service to be furnished on the regular lighting and power scales according to character of service wires to customer's premises.

Ordered further: That the Georgia Railway & Power Company be and the same is hereby authorized and required to discontinue the furnishing of free service, such as supplying lamps, or renewals thereof, etc.

Ordered further: That the Georgia Railroad & Power Company be and the said company is hereby directed to cancel all preferential contracts, and all customers using the same class of service shall be placed on the same schedule as above contemplated.

By order of the Commission:

C. M. CANDLER,
Chairman.

ALBERT COLLIER,
Secretary.

11—464

239 Railroad Commission of Georgia.

Atlanta.

Atlanta, August 14, 1918.

File No. 13,946.

In re Application of GEORGIA RAILWAY AND POWER COMPANY for Increased Fares on Its Street Railway Lines, for Increased Rates for Electric Current for Light, Power and Other Purposes.

Before the Railroad Commission of Georgia.

By the COMMISSION:

Applicant is a corporation under the laws of Georgia engaged in operating street railway service in Atlanta, Kirkwood, Decatur, East Point, College Park, Hapeville and Gainesville, Georgia. It is also engaged in serving the public in these cities and contiguous territory with electric current for heat, light and power uses.

Its services of this character also cover practically all of North Georgia, including forty-six towns, besides a large number of mills, manufacturing plants and industries.

Embraced in these services is the furnishing of current to various municipalities for the pumping of water and other public uses, and for light and power to numerous public institutions, hospitals, army posts and camps. A number of the industries served are largely engaged in the manufacture and supply of Government war materials.

Applicant operates five hydro-electric plants, four steam plants and also purchases current from five or six other plants. It generated and purchased, in 1917, 258,607,882 K. W. H., of which 222,517,694 K. W. H. were accounted for in revenue deliveries.

It operates in Atlanta and vicinity 224 9/10 miles of electric street railway and 7½ miles in Gainesville. Its Atlanta and suburban lines consist of 68½ miles of single track and 156 1/3 miles of double track.

Applicant has in service 352 miles of high tension transmission lines, 198 miles of which is on steel towers, and 324 miles of distributing lines, a total of 676 miles of transmission and distributing lines. It has developed water and steam powers, aggregating 160,800 H. P.

The important relation which the applicant sustains toward the industrial and commercial welfare of practically all of North Georgia is evident.

240 In addition to its developed water powers, it owns undeveloped water powers of more than 400,000 H. P., so that its potentialities in the future growth of North Georgia are great.

This Commission is convinced that this section of Georgia is vitally concerned in the ability of applicant to meets its responsibility as the Trustee of these great industrial resources, and to the

nd it should receive at the hands of the public and governmental gencies fair and unprejudiced treatment. And the fact that the ontrol of the Company is in other sections of the country should ot prejudice it.

The water powers developed by these interests and now dedicated useful public service, for centuries past remained undeveloped nd wasted by Georgia owners and interests. This State has need f outside capital in the development of its great resources. It has rdially invited it into its service. Surely then, no different treatent should be accorded it, coming on our invitation, than is given ome capital. And besides, such governmental agencies as this ommission, and the public, should bear in mind that hydro-electric evelopments are comparatively new ventures for capital in this ountry, and attended with more risks than attach to such long stablished ventures as steam powers.

Water sheds may be denuded of forests; droughts may and do ome; electricity itself is as yet a mystery to the greatest of xperts, and instrumentalities in its generation, distribution and ractical application are not fully perfected, and may within a rief period become obsolete and out of date.

Such considerations indicate that during the development and onstructing periods of such enterprises, where risks of loss of capal are great, some measure of considerate, if not liberal, treatment hould be extended toward venturesome capital.

This Commission at least is so impressed and shall undertake, herefore, to deal with this application in such a spirit.

And, especially so, under the abnormal conditions now prevailing n this country and throughout the world.

In a recent similar inquiry, the Indiana Pub*l*c Service Commision aptly said:

"With the outbreak of the European war and, later, with our ntrance therein, there have come conditions wholly beyond the revious imagination of any man. As if overnight, we suddenly ave been catapulted from an era of economic tranquil-ity into a aelstrom of economic revolution—the path of which has enveloped he entire industrial and commercial activities of the nation. There s no longer such a condition as normality of business, and almost very industry or commercial institution finds itself facing critical roblems for which there are no landmarks or guide posts."

41 Applicant alleges that because of these abnormal conditions created by the war; because of the large increase in the st of labor and of every material and supply used by it in supplyg service to the public, and in taxes which it is required to pay to arious jurisdictions, its operating expenses have been and are being increased, that it is no longer, under existing rates, able to meet s fixed charges and taxes, provide for the reasonable conservation its properties and secure such a return upon the value of its propty devoted to the pubilc use, as will maintain its credit and secure dditional capital with which to promptly and efficiently meet the

public demand for its essential services, and that out of these conditions there has arisen an emergency in its business, for which, in the interest of the public as well as of itself, relief is asked in the way of increases in fares and rates. It is alleged that fares and rates established under normal, pre-war conditions, as reasonable and just, are now unreasonably low and do not afford fair return, and that their insufficiency is so marked as to invite disaster or a break down in its public service, unless prompt relief is given for the period of these abnormal conditions.

Applicant submitted voluminous evidence in support of its allegations.

The City of Atlanta, other interested communities, and numerous individual patrons of the petitioner, protested against the grant of the applica-ion, but submitted practically no evidence, contenting themselves with the submission of studies and analyses of the evidence submitted by applicant, and arguments contending that the petitioner had not sustained its application.

The evidence submitted makes obvious the fact that the business of applicant has been directly and seriously affected by prevailing abnormal conditions.

The war has created such enormous demands by our Government and its European Allies for man power, materials, industrial essentials, food and capital, that the supply in this country is not equal to our largest needs, and prices and costs have soared.

The Commission knows this—every one knows it—every time one makes a purchase of an article of necessity or luxury, the fact is emphasized. Among the principal elements entering into the cost of petitioner's services are labor, steel and iron essentials, metal-ic supplies and fuel.

Without halting as to prices, it is difficult, and at times impossible, to obtain these essentials in quantities or as needed.

Increases in the cost of essentials in applicant's business run from fifty to four hundred per cent.

The evidence in this case (the common knowledge of all of us corroborating) shows large increases in the wages paid both common and skilled labor, a large item in the cost of rendering applicant's public services. Increased cost arises out of the inefficiency and uncertain character of much of the labor now obtainable.

Moreover, it is common knowledge that the existing wage
242 scales of petitioner, and other like corporations in the South, must and will be considerably increased, possibly with a retroactive effect, because a living wage only will meet living costs.

On page 21 of one of the Protestants' briefs Counsel says:

"We are going to assume that the Commission will not grant an emergency increase in rates which were voluntarily made by the Company, and which have been in force for a number of years without protest at least on the Company's part, unless it is shown that the net income produced from these rates is materially less now than it has been throughout the course of these years."

This assumption would have been quite reasonable, but for the omission of some suggestion or condition as that "the necessary investment or amount of property being used in the public service remaining the same, and the net income of previous years producing sufficient funds to provide for current depreciation and soome appreciable adequacy of return upon fair property values."

If, for example, the plant being used in the public service in 1918 has been increased fifty per cent. since 1912, would not a larger sum as "net income" be justified?

It is, of course, entirely possible for "net income" to even increase over previous years, and still be insufficient to properly care for the property and maintain the company's credit by such fair returns upon its legitimate and actual capital outlay as it is entitled to in law and good conscience.

Another consideration, in this connection, appears to us should have weight.

Today's business, industrial and financial conditions are abnormal. It is difficult to obtain large new capital for even the most promising ventures. The Federal Government, desirous of conserving capital for governmental needs, is discouraging and in some instances forbidding bond flotations for capital uses.

This Company is bound in law to supply as far as it can the public demand for the services it has undertaken to render. This Commission is vested with power to compel the rendition of adequate service and to order reasonable extensions and enlargements of its facilities and plants. The Commission has knowledge, through complaints filed with it and the undisputed evidence in this case, of the inadequacy of the Company's existing plants and facilities to meet the present demands for its services. The business interests of this section will suffer if they are not adequately served. The Company has been unable to secure new and needed capital, under war conditions, for the enlargement of its existing plants or the construction of new plants upon its undeveloped water power sites.

243 The insufficient supply of steam coal restricts steam power developments, and enforced methods of conserving coal evidence the wisdom and necessity of a larger use of our valuable and readily available water powers. It is readily seen, therefore, that such rates as will provide only a fair return upon the fair value of the property of this Company now in public srvice and which are fair to the public and not in excess of the value of the services rendered, because of the abnormal conditions prevalent, are really a necessity and this irrespective of the "net income" of past years, in order that the demands of the public may be met by increased facilities constructed out of such earnings, which under normal conditions would be distributed as dividends.

Protestants have insisted that the existing rates of Petitioner with economical management have been and are bringing in revenue sufficient to meet operating expenses and taxes and provide a fair return upon the fair value of the property used by the public.

Counsel contend further that the claims of the Company for depreciation are excessive, and that the record does not contain such information as to the character, age, uses, etc., of its properties as will enable the Commission to ascertain what is a reasonable allowance for depreciation.

It is further argued that in view of the fact that the Company has not in the past set up a depreciation reserve and has gotten along without such, it cannot now claim that the necessity for a depreciation reserve is an emergent cause for an increase in rates.

This Commission is fairly well acquainted with the properties of petitioner. Since the Company's first organization down to date it has had occasion to frequently make exhaustive inquiries into every phase of its business and its operations, the character and extent of its properties, their development and uses, its capitalization and actual values, and the financial results of its operations. Notwithstanding this, under normal conditions, an inventory and appraisal of the Company's properties and an expert audit and analysis of its revenues and expenses would be desirable, if not a duty.

Such a course at this time, in view of the Commission's comparative familiarity with the petitioner's business and properties, and because of the time necessary and the large expense which would be incurred, does not seem justified.

The Commission is abundantly satisfied that it can, without difficulty, arrive at a very conservative estimate of the minimum value of the property of this company in the public use. The Company may complain at our use of a minimum value, rather than the fair value, but certainly the public cannot. Such value may be estimated by some of the methods approved by the Supreme Court of the United States, and we, of course, are not confined in such an inquiry to the one method of estimated reproduction new and depreciated.

This Commission, nor any other that we know of, takes outstanding capitalization as the fixed measure of values. The open
244 market value of such capitalization, however, may be considered in an inquiry into values and should be weighed.

No Commission, certainly not this, prescribes rates, however, based solely upon capitalization. It is the fair value of the property in use that measures the rate, coupled with the value of the service to the public. Cost of the property is not and should not be used as the sole or exclusive method of arriving at values. It does, however, throw light on such an inquiry and should be weighed.

With a fairly approximate estimate of the minimum value of the property, it is not impossible to arrive at a fair and conservative estimate of what amount should be allowed annually on the property as a whole, for depreciation and obsolescence, without detailed estimates as to each unit, the time in use, probable life, etc. There are several other accredited methods of estimating annual depreciation, based upon observation and experience throughout the country with similar properties. The maintenance of the property of the petitioner has been high, and in the allowance for annual depreciation hereinafter made, this fact has been considered.

As to the advisability, if not the necessity, in the interest of good, continuing service to the public, as well as of justice to the owners of the property of a fair depreciation allowance, this Commission entertains no doubt. Only recently it declined to approve a distribution of surplus earnings by this same petitioner, until provision had been made for depreciation, and reaffirmed the principle that rates should provide therefor.

Protestants have insisted that applicant's claims that an emergency confronts it which requires prompt relief by increased rates, have not been sustained, and that in fact there is not an emergency.

An "emergency" is defined as an unfor-seen occurrence, or a combination of circumstances which call for immediate action or remedy.

If because of war, the operating expenses of a public utility are increased to such an extent (with reasonable certainty that still further increases are inevitable) as that after paying the same, the remaining revenues are insufficient to provide for the reasonable preservation of the property in use, the payment of governmental charges such as taxes, public improvement assessments, interest on lawfully issued bonds, contractural obligations such as reasonable rentals for property used and necessary in its business but not owned, and such a reasonable return upon owned property in use as will sustain its credit, a combination of circumstances apparently exists which calls for immediate action or remedy. It follows that when such a combination of circumstances no longer exists, the necessity for emergency relief ends. Emergency rates therefore, should be temporary and only for the period of the abnormal conditions which necessitate them.

A claim for temporary emergency rates must not be used as a means of securing an unreasonable or an unjust return, nor
245 with the purpose thereby of the permanent establishment of higher rates. The conditions of war will not be selfishly capitalized by public utilities with the consent of this Commission, nor shall they be used as a cloak under which to secure returns larger than those to which they are justly entitled. This is a period of national sacrifice and public utilities, like individuals, should be willing to forego such returns as are not necessary to meet operating expenses under careful and economic management, provide for fixed charges, contractural obligations and governmental charges, keep their properties in efficient operating condition and adequacy, and maintain their credit to the end that essential capital for additional facilities to meet the public demands or needs may be secured upon reasonable terms.

And the public should bear in mind that what might be a reasonable return upon a government bond or bank stock or the stock of an established industry producing some staple necessity, cannot be used as a measure of return which a public utility such as a combined street railway and electric generating and transmitting corporation should be permitted. The latter has contingencies, which must be measurably anticipated and properly out of earnings, or it will suffer disaster.

A street railway may in any year, be called upon to contribute

large sums under paving assessments, for example, as to which it is not consulted; over which it has no control, and the expenditure in which does not increase its business nor add a penny to its revenue.

The laying of a sewer or change in the grade of a street, as has been often seen in Atlanta, may necessitate the taking up of its rails and the entire reconstruction of its tracks, without adding another dollar to its revenues.

A sleet storm in winter or a hurricane in summer may break down scores of miles of wire and poles and necessitate the rebuilding of miles of expensive transmission and distribution lines, which cannot be charged to capital account. Such incidents may conceivably halt revenues for the time and add to normal expenses simultaneously. They are so recurrent as almost to have become certainties rather than contingencies, and hence has been widely recognized the justice of the claims of such utilities as this, that the normal rate of returns allowed them should be somewhat higher than that of more stabilized business.

This application and our action thereon concerns and affects a very large number of people, as well as the petitioner. Not all of the public are informed as to the established principles which must control in rate making for public utilities.

In the nature of things, it is without knowledge of the amount and character of the large and scattered properties devoted to its service and the large amounts of capital invested therein, by the applicant.

246 The foregoing general observations have been made with the hope that perhaps they may reach some of the public and convey some idea of the magnitude of the interests involved in this inquiry and of the necessity, which this Commission has striven to appreciate, of dealing with it from an impartial standpoint and with the fullest obtainable knowledge of the underlying facts.

Property Values.

In the following estimates, the Commission has separated the properties owned by the Georgia Railway and Power Company, and those leased by it from the Georgia Railway and Electric Company, and later consolidated them into one complete property as operated by the Georgia Railway and Power Company. We have not undertaken to arrive accurately at actual values, but have estimated minimum values.

We have used as bases of these estimates, as to the separate property of Georgia Railway and Power Co.—(1) original plans and estimates submitted, under oath, to the Commission in the original capital application of this Company when organized and (2) sworn detailed statements of actual costs of acquisition, development and constructions made from year to year, submitted in bond applications filed with the Commission.

Some items of these costs were deemed excessive and the full amounts reported have been reduced, in our estimates, by more than $1,000,000. We have excluded undeveloped properties, not in

mediately needed in its public service; (3) the open market quotations of the outstanding stock and bonds of the Company. Bonds of the Company are not allowed to be issued for the full cost of the construction, but only for 80 and 85 per cent of actual costs. This basis indicates the opinion of investors as to value. In this estimate we have excluded from capitalization outstanding Bills Payable even where claimed to represent capital expenditures, although the market quotations on outstanding capital stock anticipate the payment of Bills Payable, before there can be any application of Company assets to the liquidation of stock.

As to the separate property of the Georgia Railway and Electric Company, we have used,

(1) A detailed inventory and appraisal of its property as made March 18th, 1912, by W. A. Baehr, a consulting engineer of high reputation and character, made for the Georgia Railway and Power Company upon its lease of these properties. In passing upon one of the applications of the latter for approval of a bond issue, the attention of the Commission was called to an item of over $31,000.00 for the making of this inventory and appraisal, which it was asked should be capitalized.

This was denied. The Commission has called for this Inventory and has carefully studied the same. Made under the circum-
247 stances it was, by an Engineer of Mr. Baehr's standing, we attach value to it, and excluding "going concern" value included by Mr. Baehr, we have used it as a basis.

Unit prices now are much higher than in 1912 and a fair appraisal based on 1912 unit costs cannot be considered excessive in 1918.

To this we have added amounts for new construction, year by year, since 1912, as sworn to and submitted to the Commission in detailed statements in Bond applications:

(2) The open market quotations of the outstanding stock and bonds of the Company. Bonds are allowed for only 75 per cent of the cost of new construction. It should be remembered that values as indicated by the market quotations of capitalization include all the assets of the Company, among these the capital stock of the Atlanta Gas Light Co., and the Atlanta Northern Railway.

Estimates of the values thus made are as follows:

Georgia Railway and Power Co.

Property and Development Costs, Excluding Undeveloped Properties Known as Etowah, Newman, Inter-state, and South Carolina Water Power Sites.

From Detailed Sworn Statements as Submitted to the Railroad Commission, with Certain Overhead Expenses as Reported Excluded in Part as Excessive.

(Cents Omitted.)

1. Expenditures to October 31st, 1916, under contract of Northern Contracting Company with Georgia Power Company:	
(*a*) Acquisition and development at Tallulah Falls, Mathis and Tugalo	$5,042.0
(*b*) Transmission lines, rights of way, etc.	1,422.9
(*c*) Sub-stations, Transformer Stations, Equipment, etc.	676.5
(*d*) Telephone lines and equipment	99.2
(*e*) Distribution systems	11.2
(*f*) 20% allowed on above to cover over-head charges, including engineering, contractor's profits, law, organization and general expenses, and interest during construction	1,450.4
Total allowed expenditures to October 31st, 1916, under Northern Contracting Co. contract	$8,702.4
2. Other new constructions, made directly or purchased by Georgia Railway & Power Co., as per detailed statement *in* file, between March 17th, 1912 and October 31st, 1916, less items aggregating $97,326, questioned by the Commission..	$1,762.1
248	
3. Additional acquisitions and new constructions by Georgia Railway & Power Company, direct or purchased, between October 31st, 1916 and December 31st, 1917, as per detailed statements on file	1,024.1
4. Atlanta Water & Electric Co. property and development (known as Bull Sluice), purchased..	1,500.0
5 Blue Ridge Eletric Co. properties and development, including Dunlap Shoals	1,135.0
Total, excluding franchises, going value, and undeveloped properties not immediately needed for public service	$14,123.7

Georgia Railway & Electric Co.

Leased Properties.

1. Inventory and appraisal, March 18th, 1912, by W. A. Baehr, Engineer, made for the Georgia Railway & Power Company, for use in connection with lease of the properties from the Georgia Railway & Electric Co.:	
(a) Reproduction, new, of physical properties.....	$15,716,445
(b) Estimated condition, March 18th, 1912, 95.35% making depreciated value as of March, 1912..	$14,985,885
(c) To which add new acquisitions and constructions, chargeable to Capital Account, made between March 18th, 1912 and December 31st, 1917, as shown in sworn detailed statements filed with the Railroad Commission.....	3,617,010
Total Georgia Railway & Electric Company property, going value and franchises excluded....	$18,602,895
(d) In addition to the foregoing, there are included in the lease to the Georgia Railway & Power Company, the Atlanta Gas Light Company and the Atlanta Northern Railway. These are not included in this valuation.	

Georgia Railway & Power Company and Georgia Railway & Electric Company as Jointly Operated, Excluding Atlanta Gas Light Company, Atlanta Northern Railway Company, and Undeveloped Water Power Sites, Except Tugalo.

Consolidated Costs and Estimated Minimum Values.

June, 1918.

249 Georgia Railway & Power Company, owned..	$14,123,730
Georgia Railway & Electric Company, leased..	18,602,895
	$32,726,625
Assuming condition as of June, 1918, considering high maintenance expenditures and recent completion of Georgia Railway & Power Company development, to be 95%, deduct for Accrued Depreciation	1,636,331
Leaves as indicated present minimum value of physical properties, (Franchises and so called Going Value, excluded).....	$31,090,294
To which add necessary cash working capital, 10% of 1917 operating revenues	666,365
	$31,751,659

This Commission does not approve of the method of attempting to segregate and attach specific items of value, as "Going Value," but it believes that there is added value in physical properties which have been unified, adapted and adjusted to special uses and for specific purposes, and assuming that the foregoing costs and estimated values are the "naked" or "bare bones" minimum values of merely the physical properties under consideration, and that some consideration should be given to the fact that actual cash was paid for certain of the franchises of the Georgia Railway & Electric Company, the present value of the properties owned, leased and operated jointly or as one going concern, in our opinion, is not less than $35,000,0

Georgia Railway & Power Company.

Market Value of Capitalization as Bearing upon Present Fair Valu

June, 1918.

Stock.

Description.	Amount outstanding, par.	Market quotation.	Market value.
1st Preferred	$2,000,000	75	$1,500,0
2nd "	10,000,000	13	1,300,0
Common	15,000,000	9	1,350,0
Total.....	$27,000,000		$4,150,0

250 Bonds.

1st. and Refunding.....	12,971,500	78	$10,177,7
Blue Ridge Elec. Co.....	236,500	87	205,7
Atlanta Water & Elec. Co...	1,400,000	87	1,218,0
Savannah River Power Co...	200,000	87	174,0
Total.....	$14,808,000		$11,715,5

Georgia Railway & Power Company.

Stocks and Bonds.

	Outstanding.	Market value.
Total Stock	$27,000,000	$4,150,0
Total Bonds	14,808,000	11,715,5
Total Stock and Bonds	$41,808,000	$15,865,5

This capitalization does not include outstanding Bills Payable. It does include all of the property of the corporation, developed and undeveloped and leaseholds.

Georgia Railway and Electric Co.

Stock.

Description.	Amount outstanding, par.	Market quotation.	Market value.
Preferred	$2,400,000	79	$1,896,000
Common	8,514,600	113	9,621,498
Total	$10,914,600		$11,517,498

Bonds.

Ga. Rwy. & Elec., 1sts	$5,760,000	89	$5,126,400
" Refunding & Impr.	4,292,000	85	3,648,200
Atlanta Consols.	1,900,000	95	1,809,000
Atlanta St. Rwy.	225,000	90	202,500
Ga. Elec. Lgt. Co.	1,350,000	90	1,215,000
Total	$13,527,000		$12,001,100

Georgia Railway and Electric Co.

Stock and Bonds.

	Outstanding.	Market value.
Total Stock	$10,914,600	$11,517,498
251 Total Bonds	13,527,000	12,001,100
Total Stock and Bonds	$24,441,600	$23,518,598

This capitalization does not include Bills Payable. It does include stock ownership of allied companies, such as Atlanta Gas Light Company, as also franchises, leased to the Georgia Railway & Power Company.

Georgia Railway & Power Co. and Georgia Railway & Elec. Co.

Consolidated Market Values of Capitalization.

Georgia Railway & Power Company	$15,865,525
Georgia Railway & Electric Company	23,384,123
Total	$39,384,123

The foregoing does not include Bills Payable for Capital Account. It does include all properties developed and undeveloped, owned and leased, including franchises of the two concerns.

1917 Operations.

Having undertaken to arrive at the minimum value of the properties, as a whole, used and useful in the public service, the Commission undertook to ascertain the financial results of their operation for the year ending December 31st, 1917, under existing rates.

The following statement is fairly approximate:

Georgia Railway & Power Company.

Revenue and Expenditures, All Departments.

1917.

(Cents Omitted.)

Operating Revenues		$6,663,65
Operating Expenses		3,524,26
Net Operating Revenue		$3,139,40
Non-operating income, including—		
Dividends Atlanta Gas Lt. Co.	$165,170	
Miscellaneous	154,954	
		320,12
Total		$3,459,53
Less Taxes Paid		485,54
Total Net Income		$2,973,98
252 Less depreciation:		
In view of high maintenance heretofore claimed, supported by Engineer Baehr's condition report in appraisal of 1912, 2½ per cent on total value of physical properties, for Annual Depreciation and obsolescence, seems reasonable, viz:		
2½% on $31,090,254		777,25
Remainder of Net Income		$2,196,72

Available for Rentals, other fixed charges, contingencies and return on the fair value of the property and cash working capital devoted to the public use:

Equivalent to

6.91 per cent on estimated minimum value of naked physical properties and working capital..... $31,751,659

Or

6.15 per cent on estimated minimum value of unified and adapted properties, $35,000,000 and cash working capital, $666,000..... $35,666,000

Or

5.57 per cent on value as indicated by open market quotations of outstanding capitalization..... $39,384,123

N. B.—Included in the remainder of Net Income, Supra, $2,196,727, is $165,170 of Dividends from Atlanta Gas Light Company. Net Income should therefore be reduced by this sum or the value of the Property in use increased by the value of the Atlanta Gas Light Company property which in another proceeding we have estimated at the minimum of $3,500,000.00.

Deduction of the net income to the Georgia Railway & Power Company from the Gas Light Company property not included in valuation, $165,170 from the total net income of $2,196,727 of all owned and leased property after allowance for Depreciation, leaves $2,031,557

Equivalent to

6.39% on estimated minimum value of naked physical properties and working capital, of..... $31,751,569

Or

5.69% on estimated maximum value of unified and adapted properties and working capital..... $35,666,000

Assuming that the rental paid Georgia Railway & Electric Company is no more than a fair return on the value of the leased properties, and that being a contractural obligation which must be paid, and further assuming that the annual interest charges of the Georgia Railway & Power Company on Bonds lawfully issued must be paid, and that the sum of the two constitute no more than a fair return on the values of the combined properties, and are payable out of net income, the following result- of operations appear:

Disposition of Remainder of Net Income, Based upon Fixed Actual Charges of Georgia Railway & Power Co.

1917.

Remainder Net Income, all sources, after provision for estimated Annual Depreciation, Supra.....		$2,196,77
Less Fixed Charges, viz:		
(*a*) Contract rental for leased properties, Georgia Railway & Electric Company.....	$1,605,572	
(*b*) Interest on Bonds and Notes, Georgia Railway & Power Co..	745,823	
		2,351,39
Deficit		$154,66

Working Capital.

In the foregoing statements we have allowed as necessary working capital, $666,000.00, or approximately 10 per cent on gross operating revenue. This is in line with experience and observation. The accounts of the Company of supplies usually carried and cash actually used cearly show that this allowance is not too high.

Depreciation.

The allowance for Annual Depreciation, 2½ per cent on the estimated value of physical properties used, we are satisfied is not too high. We reached this conclusion after a study of approved tables as to the average life of the more important items constituting the properties, and from an examination of numerous estimates used by various other State Commissions on similar properties.

Georgia Railway & Electric Company Rental.

The rental paid Georgia Railway & Electric Company for the properties, rights, franchises, etc., leased from it amount to $1,605,572 in 1917.

The properties leased include all of the railway, electric light and power lines and systems and all of their equipment within a seven mile zone measured from the center of the City of Atlanta, and also the Capital Stock of the Atlanta Gas Light Company and the Atlanta Northern Railway, (the Marietta inter-urban line) and equipment, and the office building in Atlanta known as the Gas and Electric Building.

254 Taxes have been assumed and are paid by the Lessee, the Georgia Railway & Power Company.

In our treatment thus far, it is contemplated that Depreciation is also cared for by the Lessee, so that the contract rental of $1,605,572, just as paid and without any question of the items going to make up the same, is a clean net return to the owners of the Georgia Railway & Electric Company for the use of their property.

We have estimated the naked physical properties of the Georgia Railway & Electric Company as of a minimum value of $18,602,895 to which adding $3,500,000 for the Atlanta Gas Light Company, and $500,000 for the Atlanta Northern Railway Company, we have $22,602,895, as the minimum value of the physical properties leased to the Georgia Railway & Power Company. In addition, $465,678 of other assets were turned over with the leased physical properties, making, in all, $23,068,573. If there be recognized any additional value in the properties for unification and adaptation and for Franchises for which the public made or makes charges the value of these leased properties at this time can hardly be less than $25,000,000. A net rental therefore of $1,605,572, or 6.42%, in our opinion is not unreasonable, considering the character of the business and properties and the many contingencies which may materially affect earnings. Holding this view, we do not see how we can do else than allow the full amount of the contractural rental as a legitimate charge deductible from "Net Income," as in the immediate preceding statement of "Disposition of Net Income."

Interest on Bonded Indebtedness.

The deduction of $745,823, aggregate of interest charges of the Georgia Railway & Power Company, in our opinion is a proper deduction from Net Income. The Bonded Indebtedness of the Company has been lawfully issued: it was approved by this Commission: it represents 80 and 85 per cent of the cost of acquisition and development of the properties: it does not in our opinion exceed the minimum value of the property against which issued.

Assuming that the contractural rental obligations of $1,605,572 paid the Georgia Railway & Electric Company is not more than a fair return upon the value of its leased properties, and that it is all of a return which can be properly charged to the public, (in other words that the public should allow only this return from rates and that the Georgia Railway & Power Company is not entitled to a return as Lessee, in addition to the fair return to the Lessor), and

Assuming that the interest paid on Georgia Railway & Power Company bonds is a return on the value of its property measured by the par value of outstanding bonds, and

255 Assuming, still further, that provision for Annual Depreciation is essential and necessary for the conservation of the property and the continuance of efficient service to the public, the Company experienced a deficit in 1917.

The whole question as to the financial results of the applicant's operations for 1917, depends upon the allowance, if any which should be made for depreciation.

Depreciation can be, as a matter of fact, postponed. When this is done, the Company, at once, begins adding to its liabilities. Deferred maintenance and postponed depreciation are liabilities, insidious in character, because there does not happen to be a creditor who insists on payment as his debt is due, and the debt piles up with compound interest, until on the day of reckoning, disaster is realized.

We know of no manufacturing or industrial establishment whose machinery, and developments, structures and constructions of every character, except for some items like dams, forbays, buildings, etc., are so liable to depreciation or so quickly liable to become obsolescent or out of date as an electric plant. Doubtless its reservoirs are steadily filling at this time with sand and mud, and in time their capacity will be so reduced as to require dredging.

Plants of this character are like men, they grow old—they decay—they are relegated or scrapped, as out of date and no longer able to keep step with the lengthening stride of progressive art.

We therefore adhere to our own previous conviction and precedents, and provide an allowance for depreciation and obsolescence, and as we have opportunity, from time to time, shall see that such allowance is properly expended in keeping these properties in an up to date, efficient condition. We do not believe 2½% on the estimated minimum value of the property as a whole is too high.

We do not believe the applicant is facing bankruptcy.

We are impressed however, with the fact that serious problems of financing confront it, and that upon their prompt solution, depends in a large degree, its ability to render the vitally important service the public demand of it.

The industrial welfare of this community and of the section of North Georgia it serves, to say nothing of its relation to National demands and necessities, is in a large degree dependent upon the efficiency, adequacy and dependability of applicant's service.

Careful study of the results of the Company's operations for six months of 1918, which the Commission has required subsequent to the hearing, shows more favorable results than were anticipated in estimates by the Company during the hearing.

256 But in an inquiry of this character and by a body of this character, the Commission believes that it is not only proper but its duty, to take notice of well known and officially known facts and action thereunder by governmental bodies.

For example, the National War Labor Board has only very recently put into operation, with retroactive effect, increased wage scales in a number of street car systems, among the number the New Orleans Railway & Light Company. The scale made effective on that system carries a smaller percentage of increase than on several other systems upon which increased wage scales were ordered.

This Board now has before it controversies involving minimum living wage scales in Atlanta, as also Birmingham and Memphis.

The awards of the Board in these cases can be anticipated with almost absolute certainty.

If the New Orleans scale, which on account of local conditions was not increased so largely as have been others, is made effective in At-

lanta, it means an increase in the total annual wages to be paid by applicant to conductors and motormen, of $250,000 to $350,000 according to the proper construction to be put on certain applications provided for in the New Orleans award.

If any increase is given conductors and motormen, corresponding increases must be allowed all other employees, such as machinists, carpenters, linemen, foremen, inspectors, track help, etc., and such an increase means an additional $250,000.

This Commission cannot shut its eyes to such facts nor refuse them consideration.

Taking therefore, a comprehensive view of the entire situation as shown and officially known to the Commission, and of all conditions existing and confronting applicant, and of the actual result of its operations for the past eighteen months, and estimated results for the near future under a continuance, which seems certain, of existing abnormal operating conditions, and the growing demands of the public for services which seem essential to its welfare, we feel that temporary relief in the form of somewhat higher rates should be granted.

Power and Jurisdiction Over Street Railway Rates.

It is our conviction that such emergency relief as seems necessary, should be spread throughout all the rates covering the entire business of the Company.

The Commission finds itself, however, confronted with a grave and difficult question of jurisdiction and power as to affording any of such relief through increases in applicant's street railway rates.

257 Section 5 of the Act of the General Assembly approved August 23rd, 1907, increasing the membership and powers of the Commission, is in part as follows:

"The powers and duties heretofore conferred by law upon the Railroad Commission are hereby extended and enlarged so that its authority and control shall extend to Street Railroads, and Street Railroad Corporations, Companies or persons owning, leasing or operating street railroads in this State:

"Provided, however, that nothing herein shall be construed to impair any valid subsisting contract now in existence between any municipality and any such company: and provided that this Act shall not operate as a repeal of any existing municipal ordinance" * * *

The physical existence of a contract in 1907 between the town of Decatur and the lessor of applicant, prescribing a five cent maximum fare between Decatur and Atlanta is admitted. A similar contract between College Park and applicant's lessor, was in existence.

The Georgia Railway & Electric Company obtained its Atlanta franchises under an Ordinance of the City of Atlanta, approved February 8, 1902, known as the "Consolidating Ordinance." This ordinance contained the terms and provisions upon which the consolida-

tion of the street railways therein named could be made. It was accepted by the Georgia Railway & Electric Company. The proposition of the City and its acceptance by the Company constituted a contract, which contract was in existence in 1907.

The "Consolidating Ordinance" does not, in direct terms prescribe rates. It, however, contains this provision:

"The said Consolidated Company shall for the purpose of giving one continuous ride inside the City of Atlanta from a point on one of its lines to a point on another of its lines, which, however, does not carry the passenger on a parallel line or in the same general direction from which he came, grant one transfer ticket upon the payment of one full fare, provided such transfer is requested at the time of the payment of the fare."

At that time the universal fare throughout the City upon each and all of the lines embraced in the Ordinance was five cents. A "full fare" must have meant the then prevailing fare. To compel the grant of transfers and at the same time throw no restrictions upon an increase in the primary rate would have been to leave the way open to nullify the free transfer, by increasing or doubling the original and customary charge without transfers.

But whether this be the correct view as to what was a "full fare" or not, it is immaterial to a proper conclusion as to the grant of
258 the prayer of petitioner for authority to charge two cents for a transfer; to grant it, would to that extent, repeal the consolidating ordinance under which the petitioner is now operating.

The ordinances and contracts relating to rates and transfers, which from the evidence appear to us to have been physically existent on August 23rd, 1907, when jurisdiction as to street railways was conferred upon this Commission, are with the City of Atlanta as to fares and transfers within the City of Atlanta; with the town of Decatur as to fares between that town and Atlanta: with the town of Edgewood as to fares between that town and Atlanta, and with College Park as to fares to Atlanta. Transfer charges were not covered in the Decatur and College Park contracts, nor are fares or transfers, outside of the City of Atlanta covered or affected except as mentioned above.

The question as to whether the contracts physically existent were or are valid contracts is not for us to decide. This Commission is not a judicial body; and so is this true as to the validity of the City and town ordinances. On their face they purport to be ordinances. The Courts only can say whether they are valid, whether ultra vires, or not.

Our view is that when in dealing or considering dealing with the rates of a street railroad, under the terms of the Act of 1907, we come face to face with a contract or an ordinance, in existence on August 23rd, 1907, still subsisting, we are estopped until such obstacle is removed in a legal procedure before a Court of competent jurisdiction, or the General Assembly further acts.

The question before us, is not whether these cities and towns had power and authority to make contracts or pass ordinances fixing or

prescribing fares, but whether or not the General Assembly has empowered this Commission to deal with these fares, in the event it finds such contracts or ordinances actually existent.

The General Assembly, in our opinion, could have delegated such power and authority, but as a matter of fact, it appears not to have done so.

This jurisdictional question has been referred to the Special Attorney of the Commission and we have been furnished with his opinion to the effect that we are without power to set aside contracts or ordinances of the character mentioned, under the conditions of the proviso already quoted.

The Commission has adopted this opinion as its own. A copy thereof is attached to this statement and made a part hereof. (Exhibit A.)

Under the conclusion we have reached on this subject, we do not deem it wise or proper to prescribe a different fare on parts of applicant's lines, and not upon all.

259 Recommendation to City Authorities.

This Commission believes that applicant is entitled to an increase in its street car fares, and that a six cent fare would be reasonable and just, so long as existing abnormal war conditions prevail, and the justice of granting such increases by amendment to existing contracts and ordinances, is earnestly urged upon the Councilmanic authorities of Atlanta, Decatur, and College Park, with the assurance on the part of this Commission that simultaneously with the effective date of such amendment, similar provisions will be made by it as to fares in territory not included in the municipalities mentioned. The Commission does not recommend any charge for transfers.

This recommendation does not apply to the subject of fares to Camp Gordon, so long as it is used as a Mititary Camp. We have not reached a definite conclusion as to this, because of certain considerations of the national service the thousands of soldiers in that camp are rendering.

In connection with this subject it may be of value or of interest to state that the Commission has through its Rate Expert made inquiry of official sources in every City in the United States containing 100,000 population and over as to increases in street car fares granted or applications for which are pending.

There are sixty such cities.

Increases have already been granted in the following: Bridgeport, Hartford and New Haven, Connecticut; Boston, Cambridge, Fall River, Lowell and Worcester, Massachusetts; Kansas City and St. Louis, Missouri; Camden, Jersey City, Newark, Paterson and Trenton, New Jersey; Cleveland and Toledo, Ohio; Portland, Oregon; Pittsburgh, Reading and Scranton, Pennsylvania; Providence, Rhode Island; Milwaukee, Wisconsin; and Tacoma and Spokane, Washington.

Petitions to the proper authorities are now pending in Birmingham, Alabama; Los Angeles, and Oakland, California; Denver, Colo-

rado; Indianapolis, Indiana; New Orleans, Louisiana; Detroit, and Grand Rapids, Michigan; Minneapolis and St. Paul, Minnesota; Omaha, Nebraska; Albany, Buffalo and New York, New York; Cincinnati, Dayton and Columbus, Ohio; Memphis, Tennessee; Richmond, Virginia; and Seattle, Washington.

Fourteen of the Cities of this class have no rate increase petitions pending or failed to answer our inquiries.

In Georgia, the Mayor and Council of Macon, have, by ordinance, amended the franchise ordinance of that City by granting a six cent fare, in lieu of the five cent fare heretofore in effect.

This information seems to indicate that the conditions upon which the Georgia Railway & Power Company bases its application, are nation wide and not peculiar to this community.

260 Light and Power Rates.

The jurisdictional question as to street railroad fares, discussed in the foregoing, in our opinion, does not affect the issue as to electric light and power rates, nor in the remotest degree, limit the power of this Commission to deal therewith.

The existing rates in the City of Atlanta were the result of negotiations in 1912 between the City authorities and the Power Company and were then prescribed, by agreement and acceptance, in a City ordinance.

The scale of rates so prescribed by the City and accepted by the Power Company, were filed with this Commission. No request by the City or by the Company, was made of this Commission for its assent to the ordinance or contract prescribing the same, nor has this Commission at any time given formal assent thereto, or do other than recognize them as de facto rates.

Without regard however to this fact, the proviso in the Act of 1907, limiting the powers of the Commission, relates expressly and solely to street railroads.

The rates prescribed in 1912 were under vastly different conditions, affecting the cost of service, than those existing today. The Power Company's main hydro-electric development had only begun. It was not completed until 1916. Its cost exceeded estimates. It has been found necessary, recently to operate steam auxiliary plants oftener and for longer periods during the dry seasons than had been anticipated. The cost of coal has increased until the mere coal cost alone of generating one K. W. H. with steam is, today, approximately one cent. This cost is exclusive of every other item of generating, distributing and operating expense.

A careful study of the existing scale of rates shows inequalities and discriminations in the structure. Some rates are relatively low, others high. The average of rates, under the existing scale, is low.

Comparisons of electric rates prevalent in different cities is frequently misleading, and sometimes difficult because of the varying methods of stating them. Conditions prevailing in different cities are so distinctive as to seriously affect the value of such comparisons.

The character and nearness of fuel supplies; the source of gen-

erating power whether steam or water or both combined; the distance of the generating plant from the distributing market, and other local conditions, all affect the value of comparisons of prevailing rates.

There are also many prevalent theories as to rate construction. Because of the character of its business one company will build its rate structure so as to secure its largest revenues from one class or another,—another company is forced to meet peculiar or distinctive competition. Such comparisons however, bearing in mind these and similar considerations, have some value.

261 The Rate Expert of the Commission has prepared, from official sources of information, a statement of the prevailing rates in every city of the United States having a population of 100,000 or over, there being sixty such.

Because of the varying methods of stating rates, Mr. Webster has taken a representative customer of each class of customers in each city, such as residential, commercial lighting, retail power and wholesale power, and basing these upon a certain fixed relation as to installation and amount of energy consumed, (the classification being the same for each city), worked out the amount that would be paid in each city by such customers. These figures show startling differences, and considered in this manner alone, are not of much value. But the ultimate charge to the Community as a whole taking all classes of customers into consideration, is of value, and he has stated these results.

This study shows that, taking the average of all the rates, which is what the supplying company obtains for its services from the Community, Atlanta has the third lowest average rate in cities in the United States of 100,000 population and over, the figures for the three lowest being:

Los Angeles, Cal.	1.088 per K. W. H.
Oakland, Cal.	1.311 per K. W. H.
Atlanta, Ga.	1.316 per K. W. H.

The scale proposed by applicant in its petition, which we have not approved, would place Atlanta as the twelfth lowest of the cities mentioned. The aggregate additional revenue from light and power rates petitioned for is approximately $400,000.00. We have estimated under the rates which will be promulgated in our order in this application, aggregate additional revenue of approximately $190,000.00.

We consider the existing commercial lighting scale in Atlanta as high compared with the other classes; and feel constrained to revise these rates downward.

The Company has in Atlanta approximately 10,950 residence lighting customers; about 3,545 commercial lighting customers and 1,375 retail power customers.

It has in its entire territory approximately ninety wholesale (primary) power customers and twelve (secondary) wholesale power customers. It has thirty-one municipal (primary) power and sixteen seasonal power customers.

Power customers secure current because it is more economical than

other sources of power available to them. They buy it expecting to make a profit by its use. Its cost is charged, in the end, to the people who consume their products.

They are not forced to use electrical current. Steam power is available as a substitute. They are not therefore solely dependent upon electric power, and can dispense with its use whenever
262 the steam substitute is more economical. The use of electric current for lighting homes and residences is not a use for profit; it is an expense. This is true as to all artificial light in residences. The scale of prices which we shall issue provides therefore for larger percentages of increase in all power rates than in residential lighting rates.

We consider under today's conditions that the residential lighting rates in Atlanta are low and they have been slightly increased. With the exception of residence lighting rates, all of the rates of the Power Company have been heretofore stated in a complicated way, so that the average layman or citizen has difficulty in understanding them. We have undertaken to state the rates we shall prescribe, in a form more easily understood by the average customer of the Company, even if less scientifically stated. The record in this case has developed a number of low, preferential wholesale power rates.

Such preferential rates are illegal and by their discontinuance, increases will follow. The Company should never have given them. The Commission has not found it desirable, because of the numerous inequalities and discriminations found existent in the Company's present scale, to provide for additional revenue with a flat percentage increase in rates, applicable to all classes of its customers.

Much against our inclination and desire we have been compelled to make some revision in the classes, in order that discriminations might not be aggravated and perpetuated. Our utilities regulation law abhors unjust discriminations. They are inherently wrong. As far as practicable we have tried to remove them in our revision.

Emergency Rates.

The scale of rates herewith prescribed is intended to meet what we believe are legitimate needs of the applicant for additional revenue brought about by existing abnormal war conditions.

It is not intended to be accepted as permanent.

When normal conditions shall have been restored, or whenever in the opinion of the Commission desirable, a more exhaustive and detailed inquiry into the property values and the operating results of the Company, will be made and such further revision in rates as seems reasonable and just, will follow.

263 **EXHIBIT A.**

Opinion of Judge James K. Hines, Special Attorney to the Railroad Commission, on Question of Jurisdiction.

Atlanta, July 17th, 1918.

Railroad Commission of Georgia,
Atlanta, Georgia.

GENTLEMEN:

Has the Railroad Commission of Georgia, jurisdiction and power to fix passenger rates for the Georgia Railway & Power Company?

Clearly under the Act of 1907, this power is conferred upon the Commission, unless the case falls within the proviso in Section 5 of said Act.

This proviso is as follows: "Provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and provided, that this Act shall not operate as a repeal of any existing Municipal ordinance."

If the Commission fixes passenger rates for this company, will this action impair any valid, subsisting contract, which was in existence between that company and the City of Atlanta on August 23rd, 1907, the date of the approval of said Act of 1907, which placed street car companies under your jurisdiction?

To deprive the Commission of jurisdiction in this matter, such contract must be a valid, subsisting contract; it must have been in existence on August 23rd, 1907, and the action of the Commission in fixing passenger rates for this company must impair such contract.

The "Consolidating Ordinance" of the City of Atlanta, approved Feb. 8th, 1902, is dual in its character, being both an ordinance of the City and a contract between the City and the Company, by which were consolidated the street car lines therein mentioned. This ordinance contained a proposition to the street railway, setting out certain terms and conditions upon which the consolidation of the street railways therein named could be made the acceptance of which by the street railway company constituted a contract.

City Rwy. Co. vs. Citizens' St. R. Co. 166 U. S. 557
Detroit vs. Detroit Citizens' St. Rwy. Co., 184 U. S. 368, 386, 387.

It is hardly open to question, that this ordinance and its acceptance by the Georgia Railway & Electric Company constitute a contract, which was in existence at the time the Act, enlarging the powers of the Railroad Commission, was passed.

264 Then the question arises, is this contract a valid contract? In Chapter two, Art. 6, Sec. 1, Div. 4, of the Civil Code, providing for the Charter of street railway companies, it is declared, "That no street railway, incorporated under this division, shall be constructed within the limits of any incorporated town or city with-

out the consent of the corporate authorities," and "That all such street railroad companies incorporated under this division shall be subject to all just and reasonable rules and regulations by the corporate Authorities."

Civil Code, Section 2600.

The Georgia Railway & Power Co., and its predecessors, were incorporated under this law. The Charter of the latter was granted on January 28th, 1902.

Charters and Franchises 173.

So both of these companies accepted the privileges and franchises granted them in their charters, "Subject to all just and reasonable rules and regulations by the Corporate Authorities" within whose limits they operate. This is a broad and sweeping provision. It embraces all just and reasonable regulations of both construction and operation.

Now, with this power of regulation conferred upon Municipalities this company obtained and accepted the ordinances under which it operates.

But it is contended, that the contract, if in fact there be one, between the City of Atlanta and the Street railway company, embraced in the Consolidating Ordinance, is void because the City of Atlanta was without Authority to make such contract.

It is urged that this power cannot be derived from the provision in the Constitution of Georgia, which declares that "The General Assembly shall not authorize the Construction of any street passenger railway within the limits of any incorporated town or city, without the consent of the corporate authorities."

Civil Code Sec. 6448.

It is well said in the able brief of counsel for the railway company that "The scope of permissive terms of consent may be various and the dividing line between valid and invalid conditions may be difficult of discernment."

It is true, that the city cannot name any and all conditions. It cannot impose terms and conditions which are illegal. It can not name terms which cut down and impair the charter powers of a street railway company. It can not fix terms and conditions violative of the Constitutions of this State and the United States.

The City, by its terms, can not enlarge the charter of said company. Nor can the City enlarge its own Charter powers by the terms and conditions of its consent to the construction of a street railway in its streets.

265 It is true, some authorities hold that the power to regulate rates does not appertain to the government of a city, and is not municipal in character.

Webster vs. Superior Court 67. Wash. 37.

Garner vs. Mo. & K. Tel. Co. 189 No. 83.

City of Woodburn vs. Public Service Com. (Or) P. U. R. 1917 B 967, 161 Pac. 391.

But this position does not seem to be borne out by sound reasoning. The inhabitants of a city have a vital interest in the charges of a public utility serving them. If the city can regulate them in other respects, and if a street railway can not be constructed in its streets without its consent, why can not such city reasonably and legally impose terms fixing the rates of such utility?

Under the power to make contracts which they deem necessary for its welfare, a city can make a contract for the construction of water works.

Rome vs. Cabot, 28, Ga. 50.
Heilbarn vs. Cuthbert, 96 Ga. 312.

In modern cities transportation and charges for transportation are almost as important to the welfare of their citizens as is water.

The building of scho-l houses are within the scope of the general powers of a Municipal Corporation.

Cartersville vs. Baker, 73 Ga. 686.

Then, why does not the fixing of rates, which a street car company must charge its inhabitants, fall within the general powers of a city, when such city is authorized to fix the terms upon which the street car company can construct its lines in the streets? But whether the city has the power to fix rates arising from its power to consent or refuse to consent to the construction of street railways in its streets, or not, it seems to me that it has such power in cases where street railway companies are chartered under the general law for the incorporation of such companies. As we have seen above, this law declares no street railways, incorporated thereunder, shall be constructed within the limits of any incorporated town or city without the consent of the corporate authorities and that all such street railway companies, incorporated under this law, shall be "Subject to all just and reasonable rules and regulations by the corporate authorities."

Civil Code, Sec. 2600.

At the time of the passage of the Act for the incorporation of street railways, the power to make rates for such companies had not been delegated by the legislature to the Railroad Commission. There was no agency outside of the legislature for the fixing of such rates, in each case, the incorporated towns and cities of the States would have to appeal to the legislature to fix or alter the rates of their street railway companies. So it was a most reasonable and proper thing for the legislature to do, in passing an act for the incor-ation
296 of street railways, to lodge in the towns and cities of the State, the power of general regulation over such companies, including the power to fix rates. Under their charters, the Atlanta Railway & Power Company and its predecessor took them, "Subject to all just and reasonable rules and regulations by the corporate authorities" of the towns and cities in which they operate. "All just and reasonable rules and regulations" seem to me to embrace the

power to make contracts with such companies as to the rates, which they should charge.

But it is claimed that it has been judicially determined in the case of the City of Atlanta vs. Old Colony Trust Co., 83 Fed. 39 and 88 Fed. 859, that the City of Atlanta does not possess the power to contract with the street railway company for rates and transfers.

It is true that in this case the Circuit Court and the Circuit Court of Appeals held that the City of Atlanta did not have the power, so far as the Atlanta Consolidated Street Railway Company was concerned, to initiate and fix rates for such company and to require said company to issue transfers.

The Atlanta Consolidated Street Railway Company was chartered by the Secretary of State, prior to the adoption of the general act for the incorporation of street railways by the Secretary of State, and the confirmation of its charter by the legislature afterwards took place prior to the passage of the general act for the incorporation of street railways. There was nothing in the original charter of the Atlanta Consolidated Street Railway Company or in its confirmation by the legislature which made such company subject to regulation by the City of Atlanta. So whether the City of Atlanta could regulate its fares depended upon the general law of the State in existence at that time. It is true that the Circuit Court and the Circuit Court of Appeals held in the case of the City of Atlanta vs. Old Colony Trust Company, that the City of Atlanta did not derive this power from the provision of our State Constitution, which prohibits the legislature from authorizing the construction of any street passenger railway within the streets of any incorporated town or city without the consent of the corporate authorities. This case is an authority to that extent only. We question its validity as to that extent, as we shall hereinafter undertake to show.

It is unquestionably true that the fixing of rates for public service corporations is a legislative function of the State, and, while the right to make inviolable contracts, which shall prevent the State during a given period from exercising this right, has been upheld by Judicial decisions, it has been quite uniformly held that the renunciation of a sovereign right of this character must be evidenced by clear and unequivocal terms. Such power must be expressed beyond a reasonable doubt.

Milwaukee Elec. R. & L. Co. vs. Wis. Com. 238 U. S. 174.
Los Angeles Water Co. vs. Los Angeles, 177 U. S. 538.
Walla Walla vs. Walla Walla Water Co., 172 U. S. 1.
New Orleans Water Wks. vs. Rivers, 167 U. S. 674.
267 Vicksburg vs. Vicksburg Water Wks., 206 U. S. 496.
Freeport Water Co. vs. Freeport, 180 U. S. 587.

It must be borne in mind that the question in this case is, not whether the State of Georgia has surrendered to the City of Atlanta the sovereign right to fix the rates of this company, so that the same can not be altered or changed, but whether the legislature of this State has delegated to the Railroad Commission the power to fix such

rates, where the same had been previously fixed between the City of Atlanta and the company by contract or ordinance. This distinction is of vital importance in this discussion. We repeat that the question is not, whether the State of Georgia has surrendered its power to fix these rates, but whether it has granted to the Railroad Commission of Georgia, the power to fix such rates, when the same had been fixed by contract between the city and the company, or by municipal ordinance. We do not contend that any such surrender of this governmental function has been made by the legislature to any of the towns or cities in which this company operates.

As the State has not actually divested itself of the power to fix these rates, an agreement, by which the city and this company fix these rates, is made subject to the right of the State to change the same.

L. & N. R. Co. vs. Mottley, 219 U. S. 467.
Union Dry Goods Co. vs. Ga. Public Service Corp., 142 Ga. 841.
Yate Man vs. Towers, 126 Md. 513 P. U. R. 1915 E 811.
Portland R. Light & P. Co., 229 U. S. 397.
Dawson vs. Dawson Tel. Co., 137 Ga. 62.

If no specific authority has been conferred on the city to enter into these contracts, the right of the state to interfere, whenever the public welfare demands such action, was not abrogated; but these contracts remain valid between the parties to them, until such time as the state sees fit to exercise its paramount authority.

Manitowoc vs. Manitowoc & N. Traction Co., 145 Wis. 13.
Denver & S. P. R. Co. vs. Englewood (Col.) P. U. R. 1916, E. 134.
Benwood vs. Public Service Com., 75 W. Va. 127.

In other words, in the absence of express and unequivocal authority conferred by the legislature on a city to that effect, the legislative power of fixing rates is not abrogated, but the legislature can at any time fix such rates, or alter, or abolish such contract rates. But until the state does so act, rates fixed by municipalities, granting franchises to street railway companies, where such grants are accepted by such companies, are binding.

Such contracts are permissive and valid, and are binding upon the parties until such time as the state may change such rates, or fix different rates. Such contracts are permissive contracts, but nevertheless, are valid contracts until the state acts and sets them aside.

268 Applicant admits the physical existence of a contract between the town of Decatur and the Applicant. A like contract exists between College Park and this company.

Now arises the question, whether the fixing of rates by the Railroad Commission of Georgia will impair these contracts or have the effect of repealing the respective ordinances in which they are embraced.

We will deal with the City of Atlanta first. The Consolidating Ordinance contains this provision:

"The said Consolidated Company shall for the purpose of giving one continuous ride inside the City of Atlanta from a point on one of its lines to a point on another of its lines, which, however, does not carry the passengers on a parallel line or in the same general direction from which he came, grant one transfer ticket upon the payment of one full fare, provided such transfer is requested at the time of the payment of the fare."

It is true that this ordinance does not make any direct provision as to rates. In other words, it does not name the amount which shall be paid for a fare. It provided that the company shall "Grant one transfer ticket on the payment of one full fare."

It is claimed that "There was no purpose to contract as to the rates of fares," and that "What was one full fare was not the subject of agreement."

It is further claimed that "One full fare" does not mean a five-cent fare." It is pertinently asked: "If that was meant why didn't the parties say so?" The same inquiry might be made in the case of any ambiguous ordinance or agreement; but the fact of failure to be clear and explicit in the language used in any document does not authorize a presumption for or against a given construction.

The language, "One full fare" is ambiguous. In determining its meaning we must take into consideration all the surrounding circumstances. At the time the fare was five cents. While some of the companies were authorized to charge more than five cents, they did not, in fact, charge any greater rate.

Is it reasonable to suppose that the City of Atlanta granted to the Consolidated Company the various important rights and franchises embraced in this ordinance, and left to this company the right to charge any rate of fare it saw fit, subject only to legislative regulation? Would the city grant such valuable franchises, without attempting to guard against an increase in rates?

What would a transfer ticket be worth if the company was left free to double or treble the "One full fare?"

In support of the contention that "one full fare" does not mean a five-cent fare, reference is made to the repeal of Sec. 1351 (H) of the City Code of 1899, being Sec. 5758 of the City Code
269 of 1910 by the Consolidating Ordinance. This section was a part of an ordinance passed on August 22, 1899, and provided that "no person, firm, corporation or association hereafter obtaining authority or consent to construct or operate a line or system of street railways in the limits of the City of Atlanta, as now or hereafter defined, shall be permitted to collect for fares for single passengers from one point of the line or system of such company in the City limits as aforesaid, more than for one continuous trip from 12 P. M. to 5 A. M. ten cents."

It may be asked why the city should repeal this ordinance which prescribed a five-cent fare from 5 A. M. to 12 P. M. practically all day, if it was not the purpose to show that the city and the com-

pany both understood that they were not contracting for a five-cent fare.

The purpose of the city might have been to get rid of the ten-cent fare from 12 P. M. to 5 A. M.

At the time the Consolidated Ordinance was passed there were two other ordinances of the City of Atlanta embraced in the City Code of 1899, being sections 1335 and 1336. These ordinances appear as sections 2721 and 2722 in the City Code of 1910. Section 1335 provides that from and after the first day of May, 1897, it shall be unlawful for any company operating electric or other railways upon the streets of Atlanta to charge more than five cents for the transportation of any person from any point on said line or lines to any other point or points on any line or lines operated by said company, whether the same be for continuous passage on through lines, or by transfer to any other line or lines.

The ordinance, from which sections 1335 and 1336 of the Civil Code of 1899 were codified, was enacted in 1897. If it were the purpose of the City not to contract for a five-cent fare, why was it that this section of the City Code was not repealed? It was left on the statute book of the city. By the repeal of 1351 (H) of the Civil Code of 1899 the city got rid of the ten-cent fare from 12 P. M. to 5 A. M. By the retention of section 1335 of this code the city retained, or attempted to retain, the five-cent fare with transfers during all hours of the day. Furthermore, section 1336 uses the language, "Upon the payment of one full fare, as above provided, it shall be the duty of the said railway company to transport such passenger to his destination upon any line or lines of said company, and to furnish a transfer ticket without additional charge, whenever it is necessary for said passenger to change to the car of any line or lines operated by said company, in order to reach his said destination."

These two sections furnish a definition of the language, "One full fare" used in the Consolidating Ordinance, and make the term mean a five-cent fare.

But whether or not this construction of "One full fare" is correct or not, it is immaterial to the proper conclusion to be reached in this matter.

The street railway company asks for a six-cent fare within the city limits of Atlanta and two additional cents for each transfer. So clearly, if the Commission grants the application of the street railway company, its action will impair this contract between the city and the street railway company, and will pro tanto repeal the Consolidating Ordinance under which the street railway company is now operating.

There is no question that if the application of the street railway company is granted by the Commission, this action will amount to an impairment of the contract between the cities of Decatur, College Park and Edgewood on the one part and the street railway company on the other part.

Where the company accepted and acted upon a franchise to fix its maximum fare, the Railroad Commission of Vermont has no

jurisdiction under the act of that State giving the Commission jurisdiction over the matter of tolls and rates, except where governed by special provisions of law.

Barre vs. Barre and M. Traction & Power Co. 92 A. 237.

So, in my opinion, the Railroad Commission of Georgia is without jurisdiction to fix the rates within the City of Atlanta, and the rates from and to the other cities above mentioned, so as to alter or change the rates prescribed in the contracts between the company and these cities. The only tribunal, which can change these rates is the legislature of Georgia, the latter having excepted from the grant of power to this Commission the right to impair these contract rates or to repeal ordinances under which they were fixed.

The Commission has jurisdiction over the matter of transfers outside of the City of Atlanta, except where this matter is specially controlled by the contracts between the company and the other cities above refered to. The Commission can provide fares higher than five cents on the Decatur line between the hours of 12 o'clock midnight and 5 o'clock A. M. The Commission has power to regulate the matter of transfers on the line from College Park to Atlanta. The College Park contract only provides that there shall be no greater fare than five cents for each passenger from the southern limits of College Park to some central point in the City of Atlanta. Therefore, the Commission can provide extra compensation for transfers to and from College Park.

Clearly, the Commission has power and jurisdiction to fix fares for transportation of passengers in the territory lying outside of the City of Atlanta in those cases where these fares are not controlled by said contracts hereinbefore referred to.

There is no question over the power of the Commission to fix gas, electric light, heat and power rates.

It seems to me that the Commission, which has no judicial functions, should go slowly in declaring contracts and municipal ordinances null and void; and that in all cases the doubt should be resolved in favor of the validity of such contracts and ordinances.

271 The conclusions herein reached are not free from doubt, but represent the best opinion which I have been able to form after careful study of the able briefs of counsel for the applicant, and from an investigation of the authorities at my command.

(Signed) JAMES K. HINES,
Special Attorney.

272 (*Demurrer to Answer & X-bill.*)

GEORGIA,
Fulton County:

Now comes the complainant in the above stated case challenging the sufficiency of the allegations of the defendant's cross-bill for the granting of the relief therein prayed for; and demurs to the same, both generally and specially, upon the grounds now to be set forth.

1. That this court does not possess the power, either in law or in equity, to make a primary investigation into the reasonableness or unreasonableness of defendants' rate of charges that the exclusive power to declare what is a just and reasonable rate of transportation has been vested in the railroad commission of Ga.; that the only power of the courts over reasonableness of rates is in reviewing the legality of orders of the railroad commission in fixing just and reasonable rates of charges; that the railroad commission has been given exclusive jurisdiction in the matter of fixing rates; that while courts of equity have full right or review of such orders of the railroad commission, with full power to enjoin any order allowing confiscatory rates, or rates granted illegally and without due process of law, and rates which when enforced would result in the taking of private property for public use without just compensation, they have not the power nor have they heretofore ever assumed the power primarily to fix and regulate the rates of public utilities.

2. That it appears from the cross-bill that the rate fixed as to College Park and Decatur were only a part of a general body and schedule of rates affecting defendants' entire system of street railway, including its system of electric lighting; that it thus appearing that the College Park and Decatur rate was fixed in connection with a general body of rates this court does not have the power, nor would it seem to be the inclination of a court of equity
273 to segregate the College Park rate from the rest of the rates authorized by the commission in connection with the general body of rates granted on defendants' entire system; that the correctness and validity of the order of the railroad commission in approving this general body of rates can only be supervised and reviewed by a full consideration of the whole body of rates fixed by the commission and in full purview of all the facts and circumstances upon which its order was predicated; that no sufficient facts are set forth in the cross bill to show or convince that the College Park rate is unreasonable, unjust, uncompensatory, or confiscatory; that so far as the facts alleged are concerned it may be well concluded that any alleged loss or service below cost was cared for by the commission in the allowance of the remaining parts of said general body of rates; that defendants have no standing in court to attack any rate, particularly the rate fixed on the College Park line, as being discriminatory, that said defendants are in no wise concerned with questions of discriminations, except so far as their own rights are concerned with the rights of other like public utilities; that the fact that a certain rate granted to the public, as to a certain line of street railways, is discriminatory as to the public affected by other rates of other parts of the general system, only gives a right to the members of the latter public to complain; and that the defendant has no standing in court to raise this question; the only concern it has is to see that the general body of rates prescribed for it by the commission is granted under due process of law and does not have the effect of taking its property without just compensation.

3. That it appears from said cross-bill that the rate upon the College Park line, against which its complaint is aimed, has not been attacked in any court heretofore; moreover it appears that the
274 general body of rates on all other lines than those of Decatur and College Park, have since the fixing of the rate complained of been again increased so that the same now is seven cents, an addition of one cent per passenger over the rate fixed in the body of the rates, a part of which is complained of; and that to review or supervise that rate fixed for the College Park line and the Decature line would require in addition to the facts disclosed upon the former hearing of the railroad commission the facts disclosed upon the latter hearing, that it appears that instead of attacking the six cent body of rates or any part thereof, the said defendants have put in operation and kept in operation the rates therein prescribed, until the seven cent body of rates was put in operation under the latter order of the railroad commission; that being true the said defendants have been guilty of such laches and have altered the facts and circumstances considered by the railroad commission in the hearing of the six cent body of rates in such manner as to produce any effort on the part of this court or of any other court to pass upon the correctness and legality of the order of the railroad commission fixing the six cent body of rates.

4. That the facts set forth in the said cross bill do not lead to the conclusion that the general body of rates fixed either in the order for the six cent body of rates or the seven cent body of rates do not allow defendants a sufficient and legal and constitutional return upon the value of their properties devoted to the public use throughout their entire system of public utilities; that they do not show by any facts alleged that either of said bodies of rates are non-compensatory or confiscatory; that they show *on* reason why they should have in addition to the net returns accruing to their revenue from an application of either the six cent body of rates, including the College Park and Decatur rate, or the seven cent body of rates, including
275 the College Park and Decatur rate, the additional revenue which would accrue to them by increasing the College Park and Decatur rate from that fixed by the commission, as well as by their contract, to a rate of seven cents per passenger; that the presumption is that the granting of both of said bodies of rates under the facts and circumstances considered by the commission allowed them a sufficient and legal return upon the property devoted to the public use throughout their entire system, and they allege no facts showing that such presumption is not now conclusive.

5. That if any effort is made by the defendants to arrest the full operation of the College Park and Decatur rate, as fixed by the commission and by their contracts, such effort can only predominate by bringing to the attention of this court all of the facts and circumstances which go to make up the rates on their entire system; that no such facts are alleged in the cross-bill and the same is insufficient to the granting of the relief therein prayed for.

6. That in said cross bill no *effect* whatsoever is made to lay before this court the facts and circumstances which induced the commission in the making of the six cent body of rates, including the College Park rate, so as to permit this court to supervise or review the correctness of said order of the commission.

7. That this court has no inherent jurisdiction to pass upon the primary question of the reasonableness or unreasonableness of rates, this being a question of fact only within the jurisdiction of the railroad commission under the statutes of the State; that the only inherent power possessed by this court under the statutes and laws of this State, with reference to rates, is a question of law, to wit:

"Whether the order of the railroad commission fixing certain
276 rates is illegal, in that it is confiscatory and non-compensatory; that no such question is presented to this court by the facts disclosed by the cross-bill; the same being only an effort to have this court pass upon the reasonableness of rates as a primary proposition involving only a question of fact of discretion; and complainant respectfully contends to the court that it has no such power.

Wherefore, it prays the judgment of the court and that said cross bill be stricken, and all allegations of the answer as to unreasonableness and discriminat*ory* be stricken.

A. E. BROOM,
Pl'ff's Atty.

Filed in office this the 4th day of Nov., 1920.
W. L. VENABLE,
Deputy Clerk.

(*Amended Answer.*)

GEORGIA,
Fulton County:

And now comes the defendants, and, by leave of court, amend their answer filed in the above stated cause as follows:

1. (*a*) The contract as to fares alleged is not a subsisting binding contract, under which defendants can be held to charge confiscatory rates.

(*b*) Said contract, if ever binding, was one at will and has been terminated by reasonable notice given by defendants, and has been abrogated by subsequent municipal and state action.

(*c*) Neither the plaintiff nor the defendants had any right, power or authority to make any binding contracts as to fares. Under the constitution of the State, as set out in code sections 6389, 6463, 6464 and 6467, neither of the parties hereto can make any rate
277 agreement for fixed, irrevocable fares, especially if such fares are or should become, as they have become in this case, confiscatory, in violation of the fourteenth amendment to the constitution of the United States.

2. If the alleged contract should be held by the courts to be legal and binding between the parties, and if the courts should hold that the act of 1906 (Ga. Laws 1906, page 650) extended the said alleged contract to the added territory of College Park, so as to extend the claimed contract for a five cent fare over such territory, and that other subsequent acts and orders of the commission, are as contended for by plaintiff, the said acts and orders, having the effect of acts would, and do, impair the obligation of contracts in contravention of article 1, section 10, of the constitution of the United States, as hereinafter set out and explained.

3. Under the constitution of Georgia "The general assembly shall not authorize the construction of any street passenger railway within the limits of any incorporated town or city without the consent of the corporate authorities."

On Nov. 6, 1905, the city of College Park, a municipal corporation of the State of Georgia, upon petition of the Georgia Railway & Electric Company (a street railway company and the predecessor in title of the Georgia Railway & Power Company) granted to the said electric company a permission (hereinafter called a franchise) to lay a double track upon one of its then streets, in said ordinance the following provision was made as to fares:

"That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the city of Atlanta."

A five cents fare was charged up to the filing of this suit and, under injunction in this case, is now being charged.

278 4. Under the statutes of Ga. no street or suburban railway can lay its tracks in the public roads of any county in said state without consent of the proper authorities of said county.

5. On August 7, 1901, the court of Fulton (in which are located the towns of East Point and College Park) upon petition of the Atlanta Railway & Power Company (the predecessor of the Ga. Ry. & Power Company, granted that company and its assigns "the right to lay, maintain and operate an overhead electric railway, with necessary turnout and switches along and upon the East Point road between the limits of the towns of East Point and College Park." Right to double track same was granted to the Georgia Railway & Electric Company by the county of Fulton on November 13, 1905.

What is here design-ed as the East Point road is the public road running from the city of Atlanta through East Point and College Park, and into the country *sought* of College Park. It is called the limits of College Park a street, and it is the same street upon which the double track was permitted by College Park, as above stated.

6. In these grants by Fulton county there were no provision as to fares, although there were other conditions as to manner and time of construction. These grants were accepted by the railway company and tracks were built thereunder and in operation until this

date, from the city of Atlanta through East Point, over the granted road, through College Park.

7. On August 20, 1906, by act of the legislature (Ga. Laws 1906, page 650 et seq.) the corporate limits of College Park were extended from the prior corporate limits north 780 feet along the East Point road toward the city of Atlanta, thereby including within the limits of College Park 780 feet of the East Point road already then occupied by the defendants' track under the Fulton county grants of
279 August 7, 1901, and November 13th, 1905.

8. Prior to the acts of 1907 (Ga. Laws 1907, page 73 et seq.) the railroad commission of Georgia had no jurisdiction over street railways. Such companies had, prior to that time, always fixed their own fares, but in that year the legislature extended the commission's jurisdiction so as to include street railways, except that the commission was denied the power "to impair any valid, subsisting contract now (then) in existence between any municipality and any such company."

9. Prior to 1918, the company had, before 1907, and after that date, charged a flat fare of five cents. On April 2nd, 1919, the railroad commission permitted the defendants to charge a fare of six cents over all its lines, including the East Point road aforesaid, except as to that part of the College Park and the North Decatur lines covered by the alleged contract and by a later order of the commission a seven cent fare was permitted on all their lines except as to College Park and the Decatur lines covered by the alleged contract.

10. Before the decisions of the commission fixing six and seven cents fares, a five cent fare was charged over the street railway system and to all passengers entering and alighting from the cars within the corporate limits of College Park, including the 780 feet added by the act of 1906 along the East Point road. After the commission's decision and on the 5th day of Oct., 1920, defendants notified the city of College Park that if there was any contract between defendants and said city of College Park, it was one at will and that it would be terminated on the 20th day of Oct., 1920, and that thereafter a seven cents' fare would be charged and collected. To prevent that the present bill was filed and the present preliminary injunction granted, preventing the increased fare and maintaining the
280 five cents fare, not only as to the old limits of College Park, but as well to the 780 foot addition.

11. Defendants allege that if the courts hold that the effect of the said act of 1906 is to extend, by virtue of the claimed contract supra, between the defendants and College Park, the five cents fare over the 780 foot addition, then said act will impair the obligation of the contract between defendants and College Park for under that contract, defendants were to charge only five cents "from the southern limits of said city of College Park to some central point in the city of Atlanta," and it is an extension and violation of the contract to

extend this five cents fare from and to the 780 feet not then a part of College Park; and such act thus construed will violate article 1, section 10, of the constitution of the United States, preventing impairment of contracts by any State.

(*f*) If said act of 1906 shall be construed to add the territory there added to College Park to the five cents area provided for in said claimed contract, then said act would impair the obligations of the contracts between the defendants and the county of Fulton. If the consent given by College Park was a binding legal contract, the consent of the county of Fulton as to the 780 feet was also a binding legal contract. In the county consent contracts there were no provision that only a five cents' fare should be charged, and by adding to the Fulton county contracts the condition that the five cents provision is to be enforced in the added territory, the effect would be to impair the county's contracts, and to that extent violate article 1, section 10, of the United States constitution, prohibiting States from impairing contracts.

(*g*) If the courts shall so construe the act of 1907 (page 73 et seq.) the excepting from the commission's control all valid
281 subsisting contracts between street railways and municipal corporations, so as to except from the commission's control all points without the city of College Park to all parts of College Park, and from all parts of College Park, except its southern limits, to all points without College Park, then said act of 1907 impairs the contract between College Park and these defendants and violates article 1, section 10, of the constitution of the United States.

The commission has fixed fares of seven cents as to the whole railway system except as protected by said claimed contract and to prevent the charge of seven cents from and to the points above stated, the court must find that those points are taken from the commission's jurisdiction by the act of 1907.

(*h*) If the courts shall construe the orders of the commission fixing the six and seven cents fares to except from the operations of these orders, fares from and to any points except the fare from the southern limits of College Park to some central point in the city of Atlanta, then such orders of the commission will impair the obligations of the contract between College Park and these defendants, thereby violating article 1, section 10, of the United States constitution.

(*i*) The claimed contract between College Park and defendants, supra, made no provision as to transfers but only a straight five cents fare. For years prior to the war defendants charged five cents and gave transfers over the whole system, including College Park. Defendants desired to discontinue said practice of giving transfers, same not being demanded by the claimed contract, and permission to do so was asked of the railroad commission; but said commission declined the request and ordered defendants to continue to issue transfers, thereby adding this condition to the claimed contract; and this

practice was continued until the 5th day of October, 1920,
282 when defendants notified College Park that it was their purpose to discontinue said practice. To prevent that this suit was brought and the restraining order granted.

(*j*) Defendants allege that this order of the commission impaired their contract with College Park. It was no part of that contract to grant transfers, and if this court holds said contract valid, then said order, in increasing the rate of fares by adding transfers, impairs the obligations of said contract, and in so doing violates article 1, section 10, of the United States constitution.

(*k*) The five cents fare of the claimed contract is confiscatory, also twice found to be so by the railroad commission after exhaustive hearings. The judicial enforcement of this five cents fare in the College Park territory, in the absence of a contract between the parties, would clearly be illegal and in violation of the fourteenth amendment to the constitution of the United States which prohibits the State from depriving any person of life, liberty or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws.

(*l*) When complaint is made that property is being confiscated and when such confiscation is sought to be executed by producing a contract permitting it, the federal courts, as well as all other courts, will for themselves, and independently, look to see whether there is, in fact, such a claimed contract, and if no such contract is found the confiscatory rate will not be enforced.

(*m*) Defendants allege that there is no subsisting legal, binding contract between them and College Park. Neither the city nor these defendants had the power to make such a contract, either by charter or by the general laws of the State of Ga.

283 (*n*) Such a contract would violate article 4, section 2, par. 1, of the constitution of the State (Code Sec. 6463), which restricts to the legislature the power to fix freight and passenger tariffs, and denies such power to cities and street railroads.

(*o*) Said contract violates article 4, section 2, par. 2, of the state constitution (Code sec. 6464) which provides that: "The police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal protection of individuals or the general well being of the State." The claimed contract of indefinite duration for a fixed fare, no matter what change of conditions, clearly violates this provisions of the constitution.

(*p*) Said contract also violates article 1, section 3, par. 2, of the State constitution (Code sec. 6389), which provides that: "No bill of attainder, ex post facto law, retroactive law, or law impairing the obligation of contracts, or making irrevocable grants of special privileges or immunities, shall be passed." This claimed contract,

in words, insures irrevocable grants of special privileges and immunities, in the teeth of this provision.

(*q*) These defendants allege, as shown supra, that this claimed contract is clearly illegal, void and non-subsisting, and that it will not preclude the federal courts, as well as all other courts from exercising their jurisdiction to enforce the fourteenth amendment, if so, *is* can be defeated by anything in the form of a contract, no matter how illegal or invalid.

(*r*) Defendants allege that the claimed contract, when made (if ever it was) was made with reference to the quality and quantity of service then in force. To increase the quantity or quality of the service is to increase the cost of the service, and a forced in-
284 crease of the quantity or quality of the service, the contract remaining in force, is to impair the obligations of the contract between the parties. If the court construes (as it must if it makes this injunction permanent) the act of 1907, pages 73 et seq. so as to give the railroad commission power to increase the quality and quantity of service, then the contract between the parties will be impaired, in violation of article 1, section 10, of the United States constitution, against the impairment of contracts by the State.

(*s*) The railroad commission has, by orders, increased since the act of 1907, the quantity and quality of the service in, to and from College Park. If the court does not so construe the act of 1907, then the orders of the commission being the acts of the State, by increasing the cost of service, violates and impairs the contract between the parties in violation of article 1, section 10, of the United States constitution, prohibiting the impairment of contractual obligations by the State.

J. PRINCE WEBSTER,
ROSSER, SLATON, PHILLIPS AND HOPKINS,
COLQUITT AND CONYERS,
Attys. for Defts.

GEORGIA,
Fulton County:

Before me personally appeared P. S. Arkwright, president of the Georgia Railway & Power Company who upon oath deposes and says that the facts stated in the above and foregoing amendment are just and true as they stand stated. Deponent further swears that at the time of the filing of the original answer in the above and foregoing case the new facts of defense herein set out in this amendment to the answer were not omitted for purpose of delay, and that this amendment is not offered for delay.

P. S. ARKWRIGHT.

Sworn to and subscribed before me, this 2nd day of November, 1921.

B. T. SIMPSON, [SEAL.]
N. P., Fulton Co., Ga.

285 GEORGIA,
Fulton County:

Before me personally appeared W. H. Wright, secretary of the Georgia Railway and Electric Company, who upon oath, deposes and says that the facts stated in the above and foregoing amendment are just and true as they stand stated.

Deponent further swears that at the time of filing the original answer in said case the new facts of defendants hereinabove set out in this amendment to the answer were not omitted for the purpose of delay, and that this amendment is not offered for delay.

W. H. WRIGHT.

Sworn to and subscribed before me, this 2nd day of November, 1921.

B. T. SIMPSON, [SEAL.]
N. P., Fulton Co., Ga.

Allowed and ordered filed subject to demurrer. Nov. 3rd, 1921.
J. T. PENDLETON,
Judge S. C. A. C.

Service of the within amendment acknowledged, copy received. This Nov. 3, 1921.

GEO. P. WHITMAN,
Atty. for Plff.

Filed in office this the 3rd day of Nov., 1921.
T. C. MILLER.
D. Clk.

Demurrer and Motion to Strike of Plaintiff.

GEORGIA,
Fulton County:

And now comes mayor and council of the city of College Park, plaintiff in the above stated case, and files and interposes this, its demurrer to and motion to strike the original answer and cross bill of Georgia Railway & Power Company, and Georgia Rail-
286 way & Electric Company, defendants therein, and also the amendment of defendants to their said answer, which amendment was allowed and ordered filed, subject to demurrer, on Nov. 3d, 1921; and also said answer and cross bill as amended by said amendment; said defendants having had allowed and ordered filed, subject to demurrer, and having filed, on November 3d, 1921, an amendment to their said answer and cross bill; and for grounds of demurrer and motion to strike and cause thereof, says as follows:

1. Plaintiff demurs to and moves to strike said original answer and cross bill on the ground that same does not set forth sufficient facts to constitute any defense in law or equity to the petition of plain-

tiff or to the relief prayed by plaintiff in said case or any part o same.

2. Plaintiff further demurs to and moves to strike said origina answer and cross bill on the ground that the allegations thereof ar insufficient in law or equity to authorize the grant of any of th relief prayed by defendants, and are also insufficient in law o equity to constitute a cause of action or to show any right of relie against plaintiff, as prayed by defendants in said answer and cros bill.

3. Plaintiff further demurs to and moves to strike said origina answer and cross bill on the ground that defendants and each o them are concluded as to the matters and things sought to be allege therein by way of answer and as cause for relief against plaintiff by the decision, ruling and judgment of the Supreme Court of Ga. and of this court in the case of Ga. Railway and Power Compan against Railroad Commission of Ga., et al., reported in 149 Ga page 1.

4. Plaintiff demurs to and moves to strike paragraphs twenty- seven to fifty-five both inclusive, of said original answer and cro bill, and each and all of the allegations thereof, on the ground tha the same do not set forth sufficient facts to constitute a de-
287 fense in law or equity, in whole or in part, to plaintiff's petition, or to the relief prayed by plaintiff in said case, o any part of same; and on the further ground that said paragraph and the allegations thereof do not set out any such defense.

5. Plaintiff further demurs to and moves to strike paragraph twenty-seven to fifty-five, both inclusive, of said answer and cross bill, and also the prayers thereof, on the ground that same do not set forth sufficient facts or show any right, in law or equity, to authorize the relief prayed by defendants or any part of same, against plaintiff; and on the further ground that said paragraphs and the allegations thereof are insufficient in law and in equity to constitute a cause of action or show any right of relief against plaintiff, as prayed by defendants.

6. Plaintiff further demurs to and moves to strike said original answer and cross bill as to paragraphs twenty-seven to fifty-five, both inclusive thereof, and also the prayers of said answer and cross bill, on the ground that defendants and each of them are concluded as to the matters and things sought to be alleged therein by way of answer and as cause of relief against plaintiff by the decision, ruling and judgment of the Supreme Court of Ga., and of this court, in the case of Ga. Ry. & Power Co. against Railroad Commission of Ga. et al., reported in 149 Ga. page 1.

7. Plaintiff demurs to and moves to strike the amendment of de fendants filed in said case, subject to demurrer, on November 3rd 1921, and each and all of the allegations thereof, on the ground that same fail to set forth sufficient facts to constitute a defense, in law

or equity, to plaintiff's petition or alleged cause of action in said case, or to the relief prayed by plaintiff in said case, or any part of same, and on the further ground that said amendment does not set forth any such defense.

288 8. Plaintiff demurs to and moves to strike said amendment, filed on November 3rd, 1921, by defendants as aforesaid, on the further ground that said amendment and the allegations therein contained do not set forth any cause of action, or show any right, either in law or equity, against plaintiff, to authorize the grant of any of the relief prayed by defendants.

9. Plaintiff demurs to and moves to strike said amendment, filed on November 3rd, 1921, as aforesaid, by defendants on the ground that defendants and each of them are concluded as to the matters and things sought to be alleged therein, by the decision, ruling and judgment of the Supreme Court of Ga., and by this court, in the case of Ga. Ry. & Power Company against Railroad Commission of Ga. et al., reported in 149 Ga. page 1.

10. Plaintiff demurs to and moves to strike said original answer and cross bill, as amended by said amendment, filed Nov. 3rd, 1921, on the ground that the same do not set forth any defense, in law or equity, against plaintiff's petition or alleged cause of action, nor to any of the relief prayed by plaintiff, and on the further ground that the same do not set forth any cause of action against plaintiff, and do not show any right on the part of defendants or either of them to any of the relief prayed by defendants against plaintiff, and on the further ground that defendants are concluded as to the matters and things therein sought to be alleged by way of answer and as cause for relief against plaintiff, by the decision, ruling and judgment of the Supreme Court of Ga., and of this court, in the case of Ga. Ry. & Power Company against Railroad Commission of Ga. et al. reported in 149 Ga. page 1.

11. Plaintiff demurs to and moves to strike each and all of the allegations of paragraphs two, eight, nine, ten, fifteen, sixteen,
289 eighteen, nineteen and twenty-six of said original answer and cross bill, except insofar as the allegations thereof either specifically admit or specifically deny the allegations of paintiff's petition to which they are respectively directed, or alleged that for want of sufficient information defendants can neither admit nor deny the paragraph or allegations to which such answer is made; on the ground that the allegations so demurred to and moved to be stricken, are irrelevant and immaterial in law or equity to any defense or right of relief on the part of defendants, and are also insufficient in law or equity to constitute any defense or show any right to any of the relief prayed by defendants; and on the further ground that said allegations do not, either separately or together, or otherwise, set forth sufficient facts to constitute a defense, in law or equity, to plaintiff's petition or alleged cause of action, nor to authorize any of the relief sought by defendants.

Wherefore, plaintiff prays that this its motion to strike and demurrer be sustained and said answer and cross bill and said amendment be stricken.

GEO. P. WHITMAN,
Atty. for Plf.

Filed in office this the 18th day of January, 1922.

J. S. HOLLIDAY,
D. Clk.

The demurrer of the plaintiff to the answer and cross bill of defendants, filed November 4th, 1920, and the within demurrer and motion to strike of the plaintiff to defendant's said answer and cross bill and to defendant's amendment thereto, which amendment was filed on November 3rd, 1921, and to defendant's said answer and cross bill as amended by said amendment, coming on regularly for a hearing, the same are after hearing thereon hereby sustained and said answer and cross bill and said amendment to said anwser and cross bill as amended are stricken and dismissed, except only
290 in so far as same either specifically admits or denies the allegations of plaintiff's petition, or specifically allege that for want of sufficient information the allegations of said petition are neither admitted and denied.

In open court this January 18, 1922.

GEO. L. BELL,
Judge S. C. A. C.

(*Verdict.*)

We, the jury, find in favor of the plaintiff Mayor and Council of the City of College Park, and against the defendants, Georgia Railway & Power Company and Georgia Railway and Electric Company in the issues in this case, and that plaintiff is entitled to the relief prayed for by it.

This January 18, 1922.

T. J. MOORE,
Foreman.

(*Decree.*)

The jury in the above stated case having found the issues in said case in favor of the plaintiff, and that plaintiff is entitled to the relief prayed for by it, it is therefore considered, ordered, adjudged and decreed by the court that the injunctions is granted as prayed for in the petition of the plaintiff and that the amendment thereto and said injunction is hereby made permanent; and it is further ordered and decrees that the defendants Georgia Railway & Power Company and Georgia Railway & Electric Company, their officers, agents, employes and servants be and they are hereby permanently restrained and enjoined in all respects and particulars as praved for by plaintiff in its petition and amendment thereto and all the relief prayed for in said petition and the amendment thereto, is hereby granted.

91 It is further ordered and decreed that plaintiff do have and recover of defendants for use of officers of court — llars costs.

In open court this January 18th, 1922.

GEO. L. BELL,
Judge S. C. A. C.

TATE OF GEORGIA,
County of Fulton:

I hereby certify, That the foregoing pages, hereunto attached, ntain a true transcript of such parts of the record as are specified the bill of exceptions and required, by the order of the presiding dge, to be sent to the Supreme Court in the case of Georgia Rail- ay & Power Co. et al., plaintiff in error, v. Mayor and Council of ity of College Park, defendant in error.

Witness my signature and the seal of court affixed, this the 13 ay of Feb., 1922.

[SEAL.]

ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
ex Officio Clerk City Court of Atlanta.

[Endorsed:] Case No. 3081. March Term, 1922. Supreme Court f Georgia. Georgia Ry. & Power Co. et al. versus Mayor, etc., of ollege Park. Transcript of Record. Filed in office Feb. 15, 1922. . E. Talley, D. C. S. C. Ga.

92 Clerk's Office, Supreme Court of Georgia.

Atlanta, Ga., June 28, 1922.

I hereby certify that the foregoing pages hereto attached contain he original writ of error and the original citation, and also true nd complete copies of the parts of the record specified in the ræcipe in the case of Georgia Railway & Power Co. et al., plaintiff in rror, vs. Mayor, etc., of College Park, defendants in error, the same eing case No. 3081, March Term, 1922, of the Supreme Court of eorgia, as appears from the records and files of this office.

Witness my signature and the seal of the Supreme Court of the tate of Georgia hereto affixed the day and year first above written.

[Seal of Supreme Court of the State of Georgia.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Endorsed on cover: File No. 29,014. Georgia Supreme Court. erm No. 464. Georgia Railway & Power Company, Georgia Rail- ay & Electric Company, J. D. Malsby, et al., Plaintiffs in Error, . The Mayor and Council of the City of College Park. Filed July h, 1922. File No. 29,014.